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Regulation of ABC (Domestic) and Domestic ITC Operations

**Prepared for the Public Hearing
To Be Held at Hull, Quebec**

Canada

**Air Transport Committee
and
Research Branch**

REGULATION OF ABC (DOMESTIC) AND DOMESTIC ITC OPERATIONS

Reference Paper

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CANADIAN TRANSPORT COMMISSION
AIR TRANSPORT COMMITTEE
AND RESEARCH BRANCH

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Preface

This working paper has been prepared to provide background information for the assistance of those persons wishing to participate in the forthcoming public hearing on the matter of the regulation of ABC (Domestic) and Domestic ITC operations.

It is not representative of the Committee's considered views with regard to the future regulation of domestic resaleable charters; its purpose is to facilitate appreciation by parties to the hearing of the nature and substance of the issues on which public comment is being invited through the medium of a public hearing and to stimulate discussion on these and any other relevant issues.

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Chapter 1

History

1. The Historical Development of Advance Booking Charters:

In the 1960's and early 1970's, international charters were only permitted to operate between one point of origin and one point of destination and their passengers all had to be members of a group or club for at least six months in advance of flight departure. This affinity concept obliged the passengers belonging to the same organization to travel together on both the outbound and inbound flights. The rules for operating affinity charters were initially laid out in IATA Resolution 041. Numerous governments adopted the same rules, whereby the international scheduled airlines' organization effectively regulated potential competition to their regular services.

At the third International Meeting on Transatlantic Air Charter Services held in Ottawa in October 1972, representatives of Canada (led by officials of the Canadian Transport Commission), the United States and the European Civil Aviation Conference met with a view to "developing and harmonizing the framework within which appropriate charter regulations could be applied by North American and European states".¹ The major result of this meeting was a "Declaration of Agreed Principles", which in essence introduced a new category of charter operations called Advance Booking Charters (ABC's). It was further agreed to abolish the affinity charter concept and to introduce a new charter regime by April 1, 1973, with a few exceptions covering those affinity charters already approved for 1973.

Canada provided for ABC charters in her "Air Carrier Regulations"² on December 29, 1972; these regulations defined not only a number of conditions which would apply to the product itself but financial and operational and reporting requirements as well. The rules developed permitted charterers to contract a minimum block of seats from a carrier and then retail them to the general public. Furthermore, all passengers who bought a seat from a charterer from the same block of seats had to travel both outbound and inbound as a group.

By the mid 70's, the large increase in price sensitive transatlantic passenger travel was carried primarily on the Advanced Booking Charters which attracted the attention and the concern of the scheduled carriers. However, during this period, scheduled carriers had to meet IATA's requirement for 100% pricing solidarity and were thus frustrated in their attempt to introduce charter competitive pricing.

In 1976 Air Canada and British Airways, with the approval of both their governments, broke from IATA's control over price-setting and

¹ Ottawa Declaration, October 19, 1972.

² C.R.C., c. 3, as amended.

established point-to-point charter class fares (CCF) from Canada to the United Kingdom. In addition to intensifying competition between scheduled and charter air carriers on the North Atlantic, this development also created controversy and impact within Canada as the public wondered why it was cheaper to fly from Toronto to London, England than from Toronto to Vancouver.

As a result, a public meeting was held in September, 1977 by the Air Transport Committee (ATC) and domestic ABCs were introduced to Canada in early 1978. Air Canada and CP Air had already introduced, in February 1977, domestic Charter Class Canada fares (CCC) on regular scheduled services and responded to this new domestic charter threat by introducing other charter-competitive fares such as Nighthawk and Courier Jet as well as by expanding the availability of CCC fares.

In addition to the introduction of ABCs within Canada in 1978, the Minister of Transport announced the International Air Charter Policy. This policy has since been assumed by the Committee to have relevance in the domestic market. From the Information Release which accompanied issuance of this policy, it was stated that the main objective was to "promote a mix of charter and scheduled air service that best meets the needs of all segments of the travelling public". This was to be accomplished by encouraging the non-discretionary, or business traveller, to travel by scheduled services (by means of prebooking and other requirements that deter him from taking charters) and allowing scheduled and charter services to compete as freely and fairly as possible in serving the leisure travel market.

In July, 1979, a further meeting was held by the ATC to consider changes to the Domestic and International ABC Charter Regulations. The outcome from this general meeting was rule changes approved by the Commission in December, 1979. The rule changes affecting domestic charters were:

- the prebooking deadline was changed from 30 days to 14 days and was abolished for domestic night-time ABCs (departing between 22:00 and 05:00 hours);
- the minimum stay was changed from 6 days to the first Sunday after departure;

³ Guideline (5) of the policy statement is particularly relevant to a better understanding of the situation. It reads: "The existing differences between the regulations and reporting requirements governing the operation of charter services, and those applying to the carriage of traffic on scheduled services at fares and conditions essentially the same as those available on charter services, should be reduced to the minimum necessary to achieve the objectives of this policy". Nevertheless, objective (1) of the Policy Statement contained the following countervailing principle: "(1) Charter competition does not prevent an adequate frequency of direct scheduled service from maintaining or attaining economic viability."

- the carriage of ABC and ITC passengers on board the same aircraft was allowed;
- the minimum period of effectiveness of tolls was reduced to 6 months from 12 months;
- the minimum number of seats that could be contracted for by charterers in respect of large aircraft was reduced from 40 to 20 seats; and
- up to 10, 20 and 30 seats of Group F, G and H aircraft respectively were allowed to be sold within 7 days of departure (none allowed prior to December, 1979).

By an Order-in-Council, issued in February, 1980, the government further amended the domestic charter rules, as follows:

- up to one-third of the seats (on domestic ABCs) in any group F, G or H aircraft were made salable without prebooking requirement upon payment of a late booking fee;
- outbound and return bookings were made changeable upon payment of a rebooking fee provided prebooking and minimum-stay requirements were respected. Until then no changes were allowed (to flight/date) after expiry of prebooking period;
- domestic ABCs were permitted to operate between two points of origin and two points of destination (until then domestic ABCs were limited to a single origin and destination);
- provision was made to permit children under 12 to receive similar discounts available on competing scheduled services;
- the carriage of cargo in the bellyhold capacity that was surplus to passenger need was allowed and charterers other than those which contracted for the passenger seats could sell such capacity on a unit toll basis; and
- carriers operating inter-regional ABCs were permitted to contract their seats to partly or wholly owned charterers.

Since the February, 1980, Order-in-Council, the Commission has approved, after public consultation, several changes to the domestic ABC regulations. The more notable changes have been:

- abolition of the requirement for full payment to be made by the ABC passenger prior to his or her flight departure;

- the elimination of passenger lists filed by the air carrier with the Committee in respect of each domestic ABC operated; and
- public solicitation and sale of domestic ABC transportation permitted as soon as a contract is signed between an air carrier and a charterer, provided passengers are advised that the transportation offered is subject to Government approval. Previously, public solicitation could not commence until the Committee had assigned an identification number to the contract or until fifteen days after the Committee had assigned a conditional identification number to the contract.

The following section identifies more specifically the evolution of travel restrictions pertaining to ABCs from 1972 to the present time.

2. Changes in ABC Regulations Since 1972

As shown in Table 1, significant relaxation in the ABC regulations has taken place since the introduction of the ABC concept in 1972; much of this relaxation took place in 1978, 1979 and 1980. However, for some of the regulations the changes have been gradual. The more significant changes made to travel conditions are as follows:

a) Prebooking

- the required prebooking deadline for international charters has decreased four times; from 90 days, to 60 days, to 45 days, to 30 days and to 21 days and for domestic ABCs the prebooking deadline decreased two times; from 45 days (in June 1978) to 30 days and to 14 days. However, since December 21, 1979, no prebooking is required for night-time domestic ABCs (departing between 2200 and 0500 hours local time), and since February, 1980, 1/3 of the seating capacity of a large aircraft engaged in domestic ABCs can be sold without a prebooking requirement.

b) Deposit and Cancellation Fee

- the requirement to pay a deposit has concurrently followed the prebooking deadline requirement pattern except the change in 1978 requires a deposit within 10 days of the date on which the reservation is made rather than by the prebooking deadline. Within this context, in November, 1978, the required deposit (and cancellation fee) decreased from 25 percent of the retail price to not less than 10 percent and has remained at the level since.

c) Full Payment by the Passenger and Firm Itinerary Prior to Departure

- full payment and firm itinerary prior to departure were the only two significant marketing restrictions (identified in Table 1) which were not liberalized until recently. The requirement for full payment was 30 days prior to departure which was reduced to 14 days for domestic ABCs on December 21, 1979, and 21 days for international ABCs on February 12, 1980. Effective February 15, 1983, there is no longer a requirement which obliges a passenger to pay for his ABC transportation in full prior to departure.
- no changes to date/flight were allowed by the passenger after the expiry of 30-day prebooking period prior to February, 1980. An Order-in-Council issued at that time now permits changes to dates and points of departure and return after the expiry of the applicable advance booking deadline provided passengers pay a rebooking fee for each change made and that their stay away from the point of origin of their trip exceeds the applicable minimum stay.

d) Flexible Returns

- greater flexibility in selecting return dates was granted, on August 30, 1978, by allowing individuals to select their return date from the whole charter program. Previously the consumer was obliged to return with the charter group; in the Spring of 1979 this

particular flexibility was enhanced by the granting of open-jaw privileges (at the outbound destination) provided the return travel is via the same carrier and the same charterer.

e) Minimum Stay

- the minimum stay requirement was reduced from 14 days to 6 days for international ABCs charters and first Sunday after date of departure for domestic ABCs.

f) Children's Discount

- effective August 30, 1978, a small discount for children aged 2-11 was permitted; however, the retail price could not be lower than the pro rata seat cost to the charterer. By an Order-in-Council of February, 1980, the discount is now permitted to the extent available on competing scheduled services.

N O T I C E

DUE TO THE RECEIPT OF SOME 1982 ABC CHARTER STATISTICS AFTER THIS DOCUMENT WAS RELEASED IN NOVEMBER, 1983, PART A OF CHAPTER 2 "STATISTICAL SUMMARY" HAS BEEN REDONE AND IS REPRODUCED IN THE FIRST SECTION OF CHAPTER 2 OF THE REFERENCE DOCUMENT PREPARED FOR THE FORTHCOMING PUBLIC HEARING REGARDING DOMESTIC AND TRANSBORDER AIR FARES, AND ABC (DOMESTIC) AND DOMESTIC ITC CHARTER OPERATIONS.

YOU ARE ALSO ADVISED THAT THE LATE RECEIPT OF THESE 1982 ABC CHARTER STATISTICS HAS ALSO NECESSITATED EXTENSIVE REVISIONS TO BE MADE TO THE PUBLICATION "THE LOW-PRICED AIR FARE REVIEW, THE FIRST FIVE YEARS" (No. 1983/05E) RELEASED BY THE RESEARCH BRANCH IN NOVEMBER, 1983. IT IS ANTICIPATED THAT THE REVISIONS WILL BE AVAILABLE BY ABOUT JANUARY 15, 1984.

December 1983

Table 1

SUMMARY OF THE MAJOR CHARTER (ABC's) RESTRICTIONS AND CHANGES SINCE 1972
(International and Domestic¹)

Date of Change	Dec. 25/72	Nov. 21/73	Sept. 25/74	May 11/77	Aug. 23/77	Aug. 10/78	April 18, 1979	Dec. 21/79	Feb. 12/80	Feb. 15/83
1. <u>Prebooking</u> Days prior to departure booking must be made	90 days	60 days	→	45 days*	→	30 days	→	14 days for domestic, US and southern des- tinations; 30 days for all others; none for domestic night- time ABC's. (between 22:00 and 05:00 local time)	14 days for domestic US and southern des- tinations; 21 days for all others; none for domestic night- time ABC's.	→
2. <u>Deposit</u> As a % of retail price When payable	25% 90 days prior to departure	Not less than 10% 60 days prior to departure	→	65 days prior to departure	→	10 days after book- ing but not less than 10 days prior to departure	→	10 days after book- ing but not less than 14 days for domestic, US and southern destina- tions; 10 days for all others.	10 days after book- ing but not less than 14 days for domestic, US and southern destina- tions; 21 days for all others.	Payable within 10 days after the res- ervation; deposit payable forthwith where reservations are made less than 10 days prior to departure.
3. <u>Full Payment by Passenger Prior to Departure</u>	10 days prior to departure	→	→	→	→	→	→	14 days for domestic, US and southern; 30 days for all others	14 days for domestic, US and southern; 21 days for all others	No requirement
4. <u>Cancellation Fee</u> (prior to departure)	25% of retail price	10% of retail price	→	→	→	→	→	→	→	→
5. <u>Fine Itinerary</u>	No change after booking	→	→	→	→	→	→	→	→	→
6. <u>Flexible Returns</u>	All of group must return on same flight	→	→	→	→	→	→	→	→	→
7. <u>Minimum Stay</u>										
a) Caribbean, Bermuda Mexico or Central America	7 days	→	→	→	→	→	→	→	→	→
b) Other Areas - April-Oct. Nov. -Mar.	14 days except USA** 10 days	→	USA Included	7 days to USA only	7 days to all areas (including day of departure)	→	→	First Sunday after departure for domes- tic, US and southern destinations; 8 days for all other des- tinations	→	→
8. <u>Children's Discounts</u>										
a) Ages 0-1 and accompanied a seat	Free if not occupying a seat	→	→	→	→	→	→	→	→	→
b) Ages 2-11	No discount	→	→	→	→	→	→	→	→	→
9. <u>Open Jaw</u>	Not allowed	→	→	→	→	→	→	→	→	→

*By Mexico

**Canada-USA ABC's not allowed until September, 1974.

¹Note: - First domestic ABC's were operated on June 24, 1976
- Mardair began operating domestic ABC's on May 15, 1979.

Allowed if return
portion used same
carrier and the same
charterer

permitted to the
extent available on
competing scheduled
service

3. Interaction of ABCs and Scheduled Low Fares:

In 1978 and 1979 only a small number of ABCs were offered between ten city-pairs. For the most part ABCs were offered in two basic groupings: Toronto and Montreal to points in the West and Toronto and Montreal to points in the Atlantic region. At this time the scheduled carriers offered their CCC fares with limited capacity as well as Nighthawk and Courier Jet services. Wardair began operating domestic ABCs in May, 1980. While Wardair was increasing its services and capacity between 1980 and 1982, Air Canada and CP Air were expanding their Skybus and One-way/One-day services. The scheduled service prices were approximately the same as charter prices but they were less restrictive. In October, 1982, both Air Canada and CP Air offered charter competitive prices. New Saver Class fares were introduced in May 1983, which were directly competitive with Wardair's and Pacific Western Airlines' domestic ABC services. The points served and the applicable periods on Saver Class fares varies according to Wardair's schedule. Originally, these fares were offered from May 1 to December 16 by the scheduled carriers between five⁴ city pairs served by Wardair:

Calgary - Montreal
Calgary - Toronto
Edmonton - Toronto
Montreal - Vancouver
Toronto - Vancouver

The scheduled carriers' Saver Class program was extended on September 9, 1983 by adding Ottawa to points in the West (Edmonton, Calgary, Vancouver). On this date, the two carriers also introduced Saver Class fares between Toronto-Winnipeg and Vancouver-Winnipeg in reaction to Wardair's entry into these markets.

To remain competitive with Wardair's domestic charter prices available during the Christmas peak period, CP Air and Air Canada will offer Saver Class Merry Christmas fares from December 17, 1983 to January 3, 1984 between Toronto-Calgary, Toronto-Edmonton and Toronto-Vancouver.

⁴ Wardair also served Toronto-Halifax from the Summer of 1983 to October 29, 1983 but its fares were not matched by the scheduled carriers.

Chapter 2

The Competitive Interaction of Scheduled Services and Domestic ABCs

Part A.* Statistical Summary

The Past

The Introduction of this paper traced the emergence since 1978, of domestic ABCs as a competitor to the scheduled carriers in serving the price-sensitive air passenger market.

While 1983 represents only the sixth year of the existence of ABCs in the domestic market, vigorous competition has developed, especially since 1980, between ABC operators and principally the national carriers, Air Canada and CP Air, for the carriage of the discretionary traveller.

Within these past six years, and particularly over the past three years notable events have occurred in the domestic air transportation field. These events touched the areas of a) regulation, e.g. the February 1980 Order-in-Council, b) new entrants, e.g. Wardair as a domestic ABC carrier from May 1980, and c) the innovative low-priced fare responses by the scheduled carriers, e.g. seat sales and Skybus.

From a statistical perspective, it is only from 1980 that data can be looked at with reasonable comparability because no notable events occurred in the domestic air transportation field during the past three and a half years. This is also the period, however, when Canada slid into a severe recession which adversely affected the well being of the air carrier industry as well as almost all other industries in Canada.

This month the Canadian Transport Commission will be releasing to the public a very comprehensive interrelated analysis of domestic low-fare traffic and capacity, stimulation/diversion (the effectiveness of fences), and profitability and yields in the domestic air transportation market. This report will be entitled "The Low-Priced Air Fare Review - The First Five Years". The most current year in this Report will be 1982. For the purposes of this paper therefore, only the highlights from "The Low Priced Air Fare Review" will be stated, supplemented with an estimate, where possible, as to what has transpired so far in 1983 with respect to ABC traffic and a few remarks about what the near-term future may hold.

The Low-Priced Air Fare Review makes the following observations with respect to traffic and capacity:

- growth in total annual domestic scheduled passenger traffic of the national carriers, which increased throughout the period from 1977 to 1980, stagnated in 1981 and actually contracted in 1982;

* Due to the receipt of some 1982 ABC Charter statistics after this document was first released in November 1983, Part A of this chapter has been redone and now appears in the first section of Chapter 2 of the reference document entitled "Some Considerations in the Review of Domestic and Transborder Air Fares".

- while total scheduled passenger traffic dropped in 1982, the volume of domestic scheduled low-priced passenger traffic tripled during the period 1978 to 1982, comprising 37% versus just under 15% of the total scheduled passenger traffic in 1982 and 1978 respectively;
- the volume of domestic ABC traffic quintupled from 1978 to 1982 and accounted for 9.0% in 1982 as opposed to 5.6% in 1978 of all domestic low-priced revenue passenger kilometres operated by both national scheduled carriers on their scheduled services and flown by carriers which operated charters;
- in 1982, low-priced passenger traffic comprised 31% and 56% of total domestic passenger traffic for Air Canada and CP Air respectively;
- in most cases, a higher proportion of scheduled domestic low-priced passenger traffic was found in long-haul, higher density markets which corresponds with ABC passenger traffic where, in 1982, the Toronto-Vancouver and Toronto-Calgary markets accounted for over 75% of total domestic ABC travel;
- the majority of ABC passengers still travelled during the peak summer period of June, July and August, (approximately 50% in 1982) although 1982 revealed a move to increasing traffic in the off-peak periods;
- carriers operating charters experienced an average load factor of 81% in 1982 and Wardair's share of all domestic ABC passengers carried increased from 58% in 1980 to 76% in 1982; and
- domestic ITC traffic has not been a significant factor in the market place amounting to less than 1% of total domestic low-priced passenger travel on all carriers providing scheduled or charter transportation in 1978, 1980 and 1982.

To elaborate upon the foregoing highlights a few statistical tables follow which are, with the exception of ABC and ITC estimates for 1983, drawn from the Report, "The Low-Priced Air Fare Review - The First Five Years". It should be remembered when studying the figures that to this date the competition between domestic resaleable charters, e.g. ABCs, and scheduled services has been waged almost exclusively over medium to long haul routes connecting Canada's principal cities, e.g. Toronto-Calgary/Edmonton/Vancouver, Toronto-Halifax, etc. (see Table 2.2). Therefore, Canada's medium sized cities (e.g. Saskatoon) and short haul, high density city pairs such as Montreal-Toronto have not experienced the direct effects spawned by charter/schedule competition. Scheduled carriers have tended to make low-priced seats available in the non directly competitive charter markets but at prices per seat mile somewhat higher than in charter-competitive markets. Thus, the low-priced scheduled data include directly charter-competitive traffic as well as other traffic discounted to a lesser degree than charter-competitive offerings.

Table 2.1

ANNUAL TRENDS IN DOMESTIC ABC CAPACITY AND TRAFFIC

LEVEL I AIR CARRIERS¹

1978-1983

YEAR	SEATS	% CHANGE	PASSENGERS	% CHANGE	LOAD FACTOR
1978	47,961	-	39,070	-	81
1979	51,757	7.9	36,658	-6.2	71
1980	101,261	118.6	79,484	116.8	79
1981	178,501	76.3	146,279	84.0	82
1982	235,523	31.9	189,602	29.6	81
1983 ²	407,910	173.2	326,328	172.1	80

¹ Level I air carriers include Air Canada, CP Air, Eastern Provincial Airways, Nordair, Pacific Western, Quebecair and Wardair.

² Based on flight approvals and assumed load factor. Caution: These figures could be overstated in the event of flight cancellation and/or lower than anticipated load factor.

Source: Air Transport Committee Statement 41 for 1978 to 1982 data. Flights approved by the ATC as at October 20, 1983 for 1983 data.

Table 2.2

Market Share of Different Classes of Service for Selected Flight Segments

1982

	Passengers and % of Total Traffic									
	Toronto- Calgary		Toronto- Edmonton		Toronto- Vancouver		Vancouver- Calgary		Vancouver- Edmonton	
	Pass.	%	Pass.	%	Pass.	%	Pass.	%	Pass.	%
1. ABC's	49 449	7.1	14 725	2.8	93 860	11.8	4 248	0.6	- 358	-
2. ITC's	43	-	-	-	1 821	0.2	-	-	-	-
3. Low Fare - Scheduled	319 237	45.7	220 724	42.7	393 300	49.3	223 185	32.3	156 794	33.8
4. Total Scheduled	648 762	92.9	502 412	97.2	702 075	88.0	685 885	99.4	464 126	99.9
5. Total (1+2+4)	698 254	100.0	517 137	100.0	797 756	100.0	690 165	100.0	464 484	100.0

Source: Special filings submitted to the A.T.C. and Statement 41.

Table 2.3

Annual Trends in Domestic ITC Capacity and Traffic
Level I Air Carriers¹

1978-1983

Year	Seats	% Change	Passengers	% Change	Load Factor
1978	3,723	-	3,288	-	88
1979	9,734	161.5	8,246	150.8	85
1980	20,324	108.8	15,020	82.1	74
1981	22,891	12.6	17,556	16.9	77
1982	6,670	-70.9	4,790	-72.7	72
1983 ²	6,378	-4.4	4,784	-0.1	75

¹ Level I air carriers include Air Canada, CP Air, Eastern Provincial Airways, Nordair, Pacific Western, Quebecair and Wardair.

² Based on flight approvals and assured load factor. Caution These figures could be overstated in the event of flight cancellation and/or lower than anticipated load factor.

Source: Air Transport Committee Statement 41 for 1978 to 1982 data.

Flights approved by the ATC as at October 20, 1983 for 1983 data.

Table 2.4

Monthly Revenue Passenger Kilometres by Domestic Low-priced Air Fare Type

1978, 1980, 1982

RPK's (000's)

Month	1978				1980				1982			
	Scheduled National Carriers	Charter		All Low-priced Fare Types	Scheduled National Carriers	Charter		All Low-priced Fare Types	Scheduled National Carriers	Charter		Low-priced Fare Types
		ABC	ITC			ABC	ITC			ABC	ITC	
January	72,394	-	-	72,394	248,865	4,900	931	254,696	388,314	26,757	-	415,071
February	30,033	-	-	30,033	268,334	-	1,982	270,316	345,488	6,256	221	351,965
March	68,167	-	-	68,167	214,414	-	1,312	215,726	402,222	6,848	3,971	413,041
April	72,505	-	-	72,505	282,820	-	216	283,036	446,676	6,587	2,139	455,402
May	124,705	-	-	124,705	440,581	7,886	92	448,559	509,475	22,344	374	532,193
June	224,452	8,452	1,276	234,180	368,485	25,790	1,403	395,678	613,470	78,806	223	692,499
July	397,231	41,425	2,853	441,509	529,919	54,942	2,124	586,985	842,343	78,362	1,412	922,117
August	323,063	37,964	2,227	363,254	528,703	69,238	3,050	600,991	863,721	115,135	1,232	980,088
September	190,975	7,529	1,851	200,355	355,773	24,207	2,398	382,378	532,150	80,851	-	613,001
October	142,089	2,527	-	144,616	419,599	7,136	361	427,096	279,012	53,852	93	332,957
November	77,783	-	-	77,783	312,026	3,603	192	315,821	229,269	12,456	-	241,725
December	191,498	15,199	68	206,765	316,764	37,884	9,780	364,428	244,389	73,352	-	317,741
	1,914,895	113,096	8,275	2,036,266	4,286,283	235,586	23,841	4,545,710	5,696,529	561,606	9,665	6,267,800
				100.0				100.0				100.0

Source: Special filings submitted to the A.T.C. and Statement 41.

Table 2.5

A COMPARISON OF REVENUE PASSENGER-KILOMETRES BY
DOMESTIC LOW-PRICED AIR FARE TYPE: 1978, 1980, 1982

Revenue Passenger Kilometres (000s)

	1978		1980		% Change 1980/1978		1982		% Change 1982/1980
	<u>RPKs</u>	<u>% of Total</u>	<u>RPKs</u>	<u>% of Total</u>	<u>RPKs</u>	<u>% of Total</u>	<u>RPKs</u>	<u>% of Total</u>	
<u>SCHEDULED SERVICES</u>									
Air Canada	1,389,293	68.2	2,447,312	53.8	76.2	3,492,378	55.7	42.7	
CP Air	<u>525,602</u>	<u>25.8</u>	<u>1,838,971</u>	<u>40.5</u>	249.9	<u>2,204,151</u>	<u>35.2</u>	19.9	
Sub-Total	1,914,895	94.0	4,286,283	94.3	123.8	5,696,529	90.9	32.9	
<u>CHARTER SERVICES</u>									
ABCs	113,096	5.6	235,586	5.2	108.3	561,606	9.0	138.4	
ITCs	<u>8,275</u>	<u>0.4</u>	<u>23,841</u>	<u>0.5</u>	188.1	<u>9,665</u>	<u>0.1</u>	-59.5	
Sub-Total	<u>121,371</u>	<u>6.0</u>	<u>259,427</u>	<u>5.7</u>	113.1	<u>571,271</u>	<u>9.1</u>	120.2	
Total	2,036,266	100.0	4,545,710	100.0	123.2	6,267,800	100.0	37.9	

Source: Special filings submitted to the A.T.C. and Statement 41

Table 2.6

CAPACITY AND UTILIZATION: JUNE - AUGUST 1982
SCHEDULED AND CHARTER FLIGHTS
TORONTO - VANCOUVER¹

	<u>JUNE</u>	<u>JULY</u>	<u>AUGUST</u>	<u>TOTAL</u>
<u>SCHEDULED SERVICES</u>				
Total Seats Available	92,431	95,961	97,650	286,042
Total Passengers Carried	65,719	72,535	78,714	216,968
Total Load Factor - %	71.1	75.6	80.6	75.9
Discount Seats Available	61,962	72,875	76,184	211,021
Discount Passengers Carried	40,596	48,844	53,777	143,217
² Discount Load Factor - %	65.5	67.0	70.6	67.9
<u>ADVANCE BOOKING CHARTER OPERATIONS</u>				
Total Seats Available	13,935	12,120	17,153	43,208
Total Passengers Carried	12,588	11,695	16,355	40,638
Total Load Factor - %	90.3	96.5	95.3	94.1
<u>DISCOUNT PORTION</u>				
Total Discount Seats Available	75,897	84,995	93,337	254,229
Total Discount Passengers Carried	53,184	60,539	70,132	183,855
ABC seats/Total Discount Seats available	18.4%	14.3%	18.3%	17.0%
ABC passengers/Total Discount Passengers Carried	23.7%	19.3%	23.3%	22.1%

¹ Toronto-Vancouver represented 49.5% of the total ABC passengers flown in the year 1982.

² Discount load factor based on carrier definition of B-Class capacity; it is noted that after the advance booking closing date, unsold discount seats are returned to the full fare inventory.

Source: Special filings submitted to the A.T.C. and Statement 41.

The Future

A clear glimpse into the near future, two or three years hence, in terms of what the low-priced air travel market might be in size is severely clouded by the absence of an adequate time series of statistics upon which to attempt to make statistically sound projections.

The general opinion among economists is that, at best, Canada's economy may show very modest growth over the next two years; the less optimistic viewpoint is that the economy will continue to stay in the doldrums. The pessimistic assumption then is that total domestic traffic levels may stay at the level attained in 1982 for the next couple of years. More optimistically, total domestic traffic volume may attain by 1985 that reached in 1980 or 1981. In either scenario, it seems obvious that overall domestic air travel will not surge over the next couple of years.

Notwithstanding these generally cautious economic outlooks, it is less clear how Canadians will choose to spend their disposable incomes in the coming years. In spite of the recession, we witnessed (as shown in Table 2.4) a growth in total low priced revenue passenger kilometres from 4,545,710,000 in 1980 to 6,267,800,000 in 1982, an increase of almost 38% from a year of economic growth to a year of economic recession when interest rates reached record high levels. It is recalled that in 1982 scheduled low fare traffic accounted for 37% of total scheduled traffic. Given the lowering of interest rates since 1982 and a feeling that their present levels may hold for the next year or so, and given the forecasted minimal to modest activity in Canada's businesses and industries, one could conclude that the proportion of leisure or low cost travel to total travel on scheduled services will increase from its 37% share in 1982 to perhaps the mid 40 range by 1985.

This outlook for a growth in the proportion of low fare passengers to total passengers is based on the assumption that on-demand travel will either remain at its present absolute level or increase only gradually. Coupled with this outlook is the expectation that a large amount of capacity, similar to that offered this year, will remain in the domestic market and therefore air carrier efforts will continue to fill seats by offering fares designed to encourage discretionary travel. This latter expectation would only be applicable in an environment where future regulatory actions would not seriously impact on the status quo, e.g. on the number and extent of air carrier participation in the provision of capacity for low-priced air travel and on retail pricing initiatives to stimulate demand. Of course, the outcome of the forthcoming Hearing in the Matter of the Regulations of ABC (domestic) and Domestic ITC Operations, and the disposition of future licensing applications could result in a departure from the status quo.

Part B. The Committee's Mandate Pursuant to Sections 88 and 89 of the Air Carrier Regulations

Section 89 of the Air Carrier Regulations states:

"89. (1) The Committee may, upon application, permit any Canadian air carrier holding a valid Class 4 licence and using aircraft within the groups of aircraft to be used under that licence to operate inter-regional ABC's (domestic).

(2) In considering an application by a Canadian air carrier to operate an inter-regional ABC (domestic), submitted pursuant to subsection (1), the Committee shall give due consideration to all relevant matters including, inter alia, the effect of the operation of the proposed inter-regional ABC (domestic) on Class 1 and Class 2 commercial air services provided to or near the points identified in the proposed inter-regional ABC (domestic)."

A provision similar to that contained in subsection 89(2) but in respect to regional ABC (domestic) is found in paragraph 88(1)(a) of the Regulations.

The Committee assesses the potential impact that ABC (domestic) and ABC/ITC (Canada) applications could have on unit toll services as they are filed by an air carrier and based upon readily available internal information and statistics. Recently, however, the Committee decided that pending the outcome of the Public Hearing on domestic resaleable charters, a more deliberate assessment would be made of the potential impact large domestic ABC or ABC/ITC programs could have on unit toll operations and advised in a recent letter that, to this end, any interested party will have access to the non-confidential parts of such applications as soon as they are filed.

Further procedural changes could be considered for use in assessing the effect of the operation of proposed ABCs (domestic) or ABC/ITCs on Class 1 and Class 2 commercial air services provided to or near the points identified in the planned ABCs or ABC/ITCs.

Some possible new procedural approaches are outlined in this paper for public comment; no doubt there are other approaches that may be suggested by interested parties at the Public Hearing.

One possible procedural approach would be:

1. Continue the current practice whereby ABC (domestic) and ABC/ITC (Canada) applications and their potential impact on unit toll services are assessed based on information and statistics readily available to the Committee, including unsolicited inputs which may be offered by affected unit toll carriers.

Advantages:

- i. This course of action would permit proposed operators of domestic charters to continue business as usual; i.e. to file programs when they choose to do so.¹
- ii. Continuation of the present approach would not increase the Committee's workload.

Disadvantages:

- i. The present approach does not afford an opportunity for the Committee to attempt a comprehensive empirical evaluation of the potential impact of an ABC (domestic) or an ABC/ITC (Canada) application because total charter seats and total charter-competitive unit toll seats for individual city-pairs are not available when assessing one carrier's charter application in isolation from other charter operators' plans and the plans of the unit toll carriers.
- ii. Input may be absent from affected unit toll carriers as to their assessment of the potential impact on their Class 1 or Class 2 commercial air services of proposed ABC (domestic) and ABC/ITC (Canada) flights.

Four additional procedural approaches follow based on the presumption that rules would be adopted that would require that all, or perhaps a large proportion (e.g. 80%), of intended ABC (domestic) or ABC/ITC (Canada) programs be filed by a specified date prior to each travel period.¹ To make this new requirement more meaningful and to observe natural justice, affected Class 1 and Class 2 carriers would also be required to file, shortly after deadlines specified for charter applications, the number of charter-competitive seats they plan to offer for sale between the points proposed to be served by the ABC (domestic) or ABC/ITC (Canada) applicants.

With reference then to these possible new filing requirements, the perceived advantages and disadvantages of four possible procedural options are as follows:

2. Continue the current practice whereby ABC (domestic) and ABC/ITC (Canada) applications and their potential impact on unit toll services are assessed based on information and statistics readily available to the Committee, including unsolicited input which may be offered by affected unit toll carriers

Advantages

- i. This approach would permit the Committee to continue to assess in its present way all or most of the planned charter programs of each carrier at the same time and well in advance of planned operating periods.

¹ e.g. November 1st for proposed charter programs from May 1st to October 31st of the next year, and May 1st for proposed charter programs commencing November 1st of the same year and ending April 30th of the next year.

ii. Not requiring all the planned ABC (domestic) or ABC/ITC (Canada) flights to be filed by a specific date and allowing a degree of top-up would permit potential charter operators a little freedom to adjust to market conditions as they become clearer.

iii. This approach would not increase the overall existing workload of the Committee.

Disadvantages

i. Input might still be absent from affected unit toll carriers as to their assessment of the potential impact on their Class 1 or Class 2 commercial air services of proposed ABC (domestic) and ABC/ITC (Canada) flights.

ii. The Committee would not have its own in-depth assessments of the potential impact of the proposed charter programs on unit toll services.

iii. Carrier freedom to establish charter programs as close as possible to the operating season, and therefore presumably more tailored to real demand, would be lost.

iv. Requiring all or most charter programs to be filed months in advance may result in carriers employing a defensive tactic whereby even more flights than would otherwise be the case would be applied for because of uncertainty about real future demand and the outcome of their applications.²

v. Charter programs would perhaps become financially more risky for independent tour operators to become involved with because of the need to contract with carriers earlier than would be preferred.

vi. Whereas overall workload of the Committee would not increase, a workload peaking problem would result from the establishment of uniform filing dates for ABC (domestic) and ABC/ITC (Canada) programs.

vii. This approach would require changes being made to the Air Carrier Regulations and to the Committee's administrative procedures.

3. Charter applications would be served on the relevant unit toll carriers and the Committee would consider carrier interventions and rebuttals.

Advantages

i. This approach would permit the Committee to assess in a more comprehensive way all or most of the planned charter programs of each carrier at the same time, with the views of affected unit toll carriers available.

² This tactic, if in fact employed, could back-fire if too many flights were proposed and the Committee's concern for the well-being of unit toll services was thereby heightened.

ii. Not requiring all the planned ABC (domestic) flights to be filed by a specific date and allowing a degree of top-up would permit potential ABC (domestic) operators a little freedom to adjust to market conditions as they become clearer.

iii. This approach would increase the overall existing workload of the Committee marginally by requiring administrative action in ensuring applications are served on affected carriers in prescribed ways and within prescribed time periods.

Disadvantages

The disadvantages of this approach would be similar to those that would result from 2. However, this approach, because of the requirement to observe reasonable time periods to permit interventions and rebuttals to be made, would probably delay the approval or disapproval of proposed ABC (domestic) and ABC/ITC (Canada) programs by approximately a month after their initial filings with the Committee. Moreover, this latter process would increase Committee workload somewhat.

4. Charter applications would be served on the relevant unit toll carriers and the carrier interventions and rebuttals would be supplemented with basic socio-economic outlooks developed by the Committee.

The advantages/disadvantages of this approach would be very similar to those that would accrue from adoption of the previous approach. The principal difference of this possible approach versus 3. is that a socio-economic outlook or an environmental scan would be done to supplement the information provided by the carriers proposing to operate charters, and the unit toll carriers.

This approach would provide the Committee with an outlook as to whether the general (probably not city-pair specific) demand for leisure air travel is likely to be high, average or below average relative to the same previous period. It is contemplated that several macro indicators would be used to develop the outlooks. Probable indicators would include interest rates, unemployment statistics, data concerning disposable incomes, personal saving accumulation rates and general economic activity forecasts by region.

Thus this approach would give the Committee another source, in addition to the carriers' data, to be used in determining whether the various ABC (domestic) and ABC/ITC (Canada) applications filed should be approved. This approach would, however, impose an additional workload upon the Committee.

5. Charter applications would be served on the relevant unit toll carriers and the Committee would perform a detailed assessment of each proposed charter program drawn from interventions, rebuttals and other information to determine the potential impact of the proposed charter programs upon affected Class 1 and Class 2 commercial air services.

This approach would provide the Committee with a good deal of quantitative data by city-pair and would attempt to answer questions like the following many months ahead of the period under review:

- total seats, scheduled versus charter?
- total scheduled seats available for leisure travel?
- total leisure demand?
- share of leisure demand to be obtained by scheduled and charter flights?
- retail prices of charter seats and deep discount scheduled prices?
- economic viability of the proposed charter flights and the planned scheduled services?
- the potential effect of proposed ABC (domestic) charter programs upon affected Class 1 and Class 2 services, i.e none, minimal, moderate, substantial?

While it is theoretically possible to attempt to answer questions like the foregoing, it is realized that the answers obtained would be tenuous at best because of the great difficulty inherent in forecasting occurrences in micro economic situations such as in respect to leisure air travel at the city-pair level. In addition, this degree of assessment would impose a large burden upon the Committee and could take, given existing staff resources, many weeks after carrier interventions and rebuttals are received to complete and thereby delay accordingly eventual Committee disposition of the ABC (domestic) and ABC/ITC (Canada) applications.

Notwithstanding the foregoing, a large practical and public relations problem has to be faced by the Committee in dealing with ABC (domestic) or ABC/ITC (Canada) applications in the current manner or in any of the approaches outlined herein. Reference here is to the regulatory fact that a carrier can now contract with a charterer and that charterer can commence advertising and sale of the charter seats, subject to approval by the Committee, before the charter program has even been filed by the carrier with the Committee. The marketing of resaleable charters has thus become similar in the absence of regulatory control to the marketing of deep-discount scheduled fares. This recent regulatory change was taken by the Committee as a step towards meeting, in part, the spirit of the International Air Charter policy statement of 1978 which sought to have both deep-discount scheduled and charter products marketed on an equitable basis. Therefore, while various approaches towards assessing ABC (domestic) and ABC/ITC (Canada) charter applications vis-a-vis their potential effect upon unit toll services can be considered for implementation, subsequent action by the Committee to not issue identification numbers to applications could, and probably would, result in adverse public reaction due to seats with respect to these proposed flights having already been sold.

Consequently, rather than adopting an adversary procedure along one of the aforementioned approaches that would be ultimately self-negating for reasons just given, a predetermined control system might be put in place for assessing domestic ABC and ABC/ITC applications and the planned leisure capacity offerings of scheduled carriers. For example, based upon historical air passenger traffic data, an estimate for each travel season could be produced of the number of seats that will be required between each city pair to satisfy

anticipated leisure demand. A system could then be developed to allocate these seats between scheduled and charter carriers. The charter allotment might then be distributed to potential participants in each market either on a first come first served basis or on an historical share basis. In addition, charter applications made by carriers that failed to maintain a high average load factor in the past season might be rejected.

While the Committee could adopt a version of an adversary system, whereby ABC operators would be required to demonstrate need and unit toll carriers would be expected to show harm ABCs would cause or the Committee could adopt a predetermined control system, it appears that either course would be exceedingly difficult to effect in such a way as to permit scheduled and charter services to compete as freely and fairly as possible in serving the leisure travel market while, at the same time, ensuring the maintenance of an adequate frequency of year-round scheduled services.

It would seem that insofar as the existing air transportation structure in Canada is concerned, i.e. the co-existence of unit toll services and resaleable charter operations, the least arbitrary intrusion into the provision of capacity for leisure passengers might be for the Committee to consider redefining travel conditions (fences) in respect of resaleable charter operations and charter-competitive scheduled capacity. This approach would be directed towards preserving most of the non-discretionary passenger demand for transportation on scheduled services. It might be assumed then that the level of scheduled services would tend to be provided "adequate" to the needs of the non-discretionary demand.

Chapter 3

TRAVEL CONDITIONS AND OPERATIONAL RESTRICTIONS

ADVANCE BOOKING CHARTERS

TRAVEL CONDITIONS

Advance booking requirement

Passengers proposing to travel on a domestic ABC must book 14 days prior to the date of their outbound departure. However, up to 1/3 of the seating capacity of an F, G or H aircraft (e.g. DC9, B727, L1011 respectively) engaged in a domestic ABC may be sold up to the day of departure of the outbound portion if a late booking charge of at least that specified in the ABC air carrier's tariff is paid. In practice, the late booking fee has been set at as low as \$1. However, the charterer is free to set a fee in excess of this amount. No prebooking is required for night ABCs, i.e. ABCs departing between 2200 and 0500 hours local time.

Passengers are required to book the return transportation at the same time as they make a reservation for the outbound portion of the ABC (domestic). However, an open return date is permitted if the rebooking charge specified in the ABC carrier's tariff, e.g. \$20, is collected when the ticket containing the coupon specifying open return is issued.

Length of stay

Passengers travelling on domestic ABCs may not commence their return transportation earlier than on the first Sunday after departure. The minimum stay requirement applies also to passengers who book late or travel on night ABCs (domestic).

Changes to bookings

If a passenger elects to change a confirmed reservation after the applicable prebooking deadline or after departure of his flight where no advance booking requirements apply, a rebooking fee specified in the ABC carrier's tariff must be paid. Changing a reservation is permitted only if the advance booking, if applicable, and the minimum stay requirements are observed. In practice, Canadian charter operators have set the minimum rebooking fee at \$20. The charterer is at liberty to set this charge at a higher level.

Open jaw travel

Open jaw travel at destination is permitted where both the outbound and return portions are operated by the same air carrier under contract with the same charterer (e.g. Toronto-Vancouver by air, Vancouver-Calgary by surface mode and return to Toronto by air) and provided that the shortest of the air portions is at least half the distance of the longer one.

Payment

A deposit of not less than 10% of the applicable seat price must be collected from a purchaser of domestic ABC transportation by the charterer or his sales agent within 10 days after the reservation is made; where a reservation is made 10 days or less prior to the normal prebooking deadline, i.e. 14 days, the deposit of not less than 10% is payable forthwith; in the case of night ABCs and late reservations (top-off), the deposit of not less than 10% is payable forthwith where the reservation is made less than 10 days prior to the departure of the outbound portion of the ABC (domestic).

Cancellation/Refunds

A portion of the deposit that is not less than 10% of the applicable seat price is not refundable except where the ABC (domestic) is not performed.

INCLUSIVE TOUR CHARTERSTRAVEL CONDITIONSAdvance booking requirement

ITCs may be sold up to time of flight departure. Each tour participant is required to make a firm reservation for the return portion of an ITC at the same time a reservation for the outgoing portion is made.

Length of stay

The return flight of an inclusive tour charter shall not be commenced prior to the 72nd hour after the scheduled hour of the day of departure from the point of origin of the tour.

Changes to bookings

No change in a reservation for an air portion of an ITC is allowed after departure of that ITC from its point of origin.

Open jaw travel

Open jaw travel is permitted (e.g. Toronto-Vancouver by air, Vancouver-Calgary by surface mode and return to Toronto by air).

Payment

Payment in full is required before commencement of inclusive tour.

Cancellation/Refunds

No rules with respect to cancellations or refunds are contained in the Air Carrier Regulations. In practice, the amount of the charges imposed by the tour operators for cancellation depends on the length of time prior to planned departure that notice is received by tour operator.

SCHEDULED SERVICESTRAVEL CONDITIONS¹Advance booking requirement

Reservation for all portions of the trip shall be confirmed prior to the issue of a ticket and the ticket shall be issued at least 14 days prior to the passenger's departure from the point of origin, except that a passenger may elect not to make a reservation for the return portion of the trip if an additional charge of \$30 is paid at the time the ticket is issued, in which case a reservation may be made at any time for the return portion of the trip.

Length of stay

The return portion of the trip shall not commence earlier than the first Sunday following the date of departure from the passenger's point of origin. National carriers allow a maximum stay of 6 months under their Skysaver/Saver Class programmes.

Changes to bookings

At the request of the passenger, a confirmed reservation may be changed after the issue of a ticket if the changed reservation is in accordance with the above, and the passenger pays a charge of \$30.

Open jaw travel

Open-jaw trips are permitted but the passenger is generally required to pay the round trip fare applicable to the longest of the two portions.

¹ As reflected by A.T.C. Decision No. 6869, which outlines minimum conditions for domestic scheduled services discounted more than twenty five percent from the lowest applicable unrestricted public fare. Departures from the conditions described in the said Decision may be authorized upon application to the Committee. Certain conditions which apply to specific fares (e.g. Air Canada's Skysaver Class and CP Air's Saver Class fares) that are competitively matched with ABC charter prices and conditions on major market segments are also described in this section.

Payment

Tickets must be purchased no later than 14 calendar days after the reservations are confirmed and at least 14 calendar days prior to departure from the point of origin.

Cancellation/Refunds

A refund of the ticket price less a charge of \$30 shall be made by the air carrier to the passenger where the passenger cancels a confirmed reservation prior to the departure of the outbound flight. If a portion of the ticket has been used, the refund shall be the amount equal to the difference, if any, between the fare paid by the passenger, less \$30, and the one-way regular Economy Class fare applicable to the transportation used.

OPERATIONAL RESTRICTIONS APPLICABLE TO DOMESTIC
ABCs, ITCs AND SCHEDULED SERVICES

Requirement to apply

Every air carrier that is to perform the outgoing portion of an ABC shall, upon executing the contract for that ABC, notify the Committee in writing (but not earlier than one year) of the proposed operation. No air carrier shall operate on ABC (domestic) or a series of back-to-back ABC (domestic) flights without first obtaining one or more identification numbers, as may be appropriate, from the Committee.

No air carrier shall operate an ITC without first obtaining a permit from the Committee. Every application for a permit shall be made by the air carrier in writing and filed with the Committee not less than 45 days and not more than one year prior to the date of the proposed operation. Every applicant for a permit must provide details of the proposed tour (e.g. dates and times of the proposed charter, origin, destination and routing, type and configuration of aircraft, name of tour operator chartering the aircraft, calculation of charter price and inclusive tour price).

An applicant for an ABC or ITC must provide the Committee with an executed copy of the contract between the charterer/tour operator and the air carrier. It must also provide the Committee with a statement by each charterer/tour operator setting out certain information (e.g. a summary of the charterer/tour operator's business experience relating to transportation activities and evidence of financial responsibility).

It may be argued that this creates an undue administrative burden for charter operators since carriers offering scheduled services do not have to meet such requirements. However, in order to carry out assessments (Sections 18(3), 88(1)(a) and 89(2) of the Air Carrier Regulations) on the possible detrimental effect of domestic

charter programs on Class 1 and Class 2 commercial air services, information on proposed charter operations is required. In addition, filing of charter contracts are a useful test of the bona fides of a charterer/tour operator and consequently assist in protecting the consumer.

Capacity

As with unit toll services, Class 4 licence holders must operate aircraft within the weight group permissible by their licence. Scheduled carriers may be restricted in terms of the number of flights they may offer between specific points on their licence. Carriers proposing to operate domestic ABCs or ITCs are free to apply for the operation of as many flights as they wish.

Multiple pickups and dropoffs

Domestic ABCs must not be operated between more than two points of origin and two points of destination, whereas no domestic ITC for which one aircraft is engaged may serve more than three points of origin and three points of destination, except that any number of destinations may be served by an ITC where all participants thereof visit each destination in turn. Scheduled carriers may operate between any number of points authorized under their licences.

Provisions applicable to domestic ABCs and ITCs are somewhat artificial in that a charter operator would not find it attractive to serve more than two points of origin and two points of destination due to increased costs (e.g. additional fuel burn, landing and terminal fees, maintenance charges, etc.) and less passenger appeal, notwithstanding the possibility that exists for programmes to be established and marketed for travel between the intermediate points of multi-stop flights.

Consolidation/Cancellation

An air carrier must notify the Committee of the cancellation of an approved ABC (domestic).

To consolidate a cancelled ABC (domestic) in with another ABC (domestic) the air carrier must, if such consolidation is planned to occur within fifteen days of the proposed departure of the consolidated ABC (domestic), seek the Committee's approval. In considering whether to approve an application to consolidate domestic ABCs, the Committee must be satisfied that the domestic ABCs proposed to be consolidated would not be economically viable as originally approved and that the consolidation would be in the public interest. Moreover, no application for consolidation shall be approved by the Committee unless, inter alia, the consolidated ABC (domestic) is to be flown to not more than two points of destination from not more than two points of origin, and the outgoing portions of the cancelled ABC (domestic) and the one with which it is to be consolidated are scheduled to be operated on the same day (the same condition is applicable with respect to the return portions). Finally, no

applicaiton for consolidations of consecutive ABCs (domestic) shall be approved for a consolidated series extending beyond 13 weeks from the date of the first flight to be consolidated.

There are no provisions in the Air Carrier Regulations regarding consolidation of ITCs. However, an application for an amendment to an approved ITC must be filed with the Committee at least 15 days prior to the proposed effective date of such amendment.

For scheduled services, amendments to service schedules must be filed with the Committee at least ten days prior to the effective date; the Committee may, under special circumstances, grant special permission to amend service schedules on short notice.

Carriage of goods

No restrictions exist for scheduled carriers. As for charter operators, goods may be carried in the bellyhold of the aircraft only between the points served for the purpose of embarking or disembarking passenger traffic. Such a limitation prevents undue diversion of cargo traffic from scheduled services while permitting the charter operator to increase efficiency and utilize otherwise empty capacity.

PROBLEMS OF ENFORCEMENT

Sale of one way ABC transportation

Section 58.(2) of the Air Carrier Regulations specifies that "every contract shall contain the provisions that each intended passenger on an ABC shall make a reservation for his return ABC transportation at the same time as he makes a reservation for the outbound portion of the ABC ...". While the Air Transport Committee lacks jurisdiction over the charterer, there is no doubt that it has jurisdiction over the air carrier and that the onus is on the latter to ensure that the provisions of the contract are complied with. However, in the event of the sale of one way ABC transportation by the tour operator or its agent(s), the air carrier may prove that it took all reasonable care or that it exercised due diligence (i.e. the passenger was accepted for travel on the strength of the return ticket issued by the tour operator) to prevent the commission of an offence. It is evident that this indirect means (i.e. through the carrier) of controlling charterers/tour operators is ineffective and leaves the Air Transport Committee on tenuous ground to carry out any effective action.

Eligibility of passengers to travel

The Air Carrier Regulations require that passengers meet certain conditions (e.g. advance booking and minimum stay requirements) in order to qualify for travel on domestic ABC s. Therefore, the air carrier must attempt to ensure that sellers of domestic ABCs

indicate certain information on the tickets, thus enabling the Committee to monitor eligibility of passengers to travel. However, the tour operator or its agent(s) may omit or falsify such information. As in the above case, this raises questions as to the Committee's ability to correct the situation since it has no direct jurisdiction over tour operators and third parties.

Retail pricing

Since ABC retail prices are outside any effective control by the Committee, third parties are at liberty to sell seats/tours shortly before the departure of the flight (e.g. the "Last Minute Club") at substantial discounts, usually below cost.

Sale of seats/tours prior to filing of executed copy of the contract

The sale of ABCs/ITCs may take place immediately upon execution of the contract which is to be forwarded forthwith to the Committee. However, several days can elapse before the contract is received by the Committee.

Public Solicitation

As vertical integration is permitted under the Air Carrier Regulations, advertising is difficult to monitor. The air carrier may do through its own tour operator things that it is prohibited from doing by the Air Carrier Regulations. Moreover, there is an inherent difficulty in convincing the courts that there is justification for piercing the corporate veil between associate companies and considering them as one and the same company.

EFFECTIVENESS OF FENCES

The establishment of passenger air fares involves not only the question of price levels but also the terms and conditions that define the air transportation product. The terms of sale which condition or restrict the availability of an air fare have become increasingly varied in recent years as carriers in Canada have experimented with various schemes designed to stimulate traffic, compete with other carriers (both scheduled and chartered) and to increase revenue. The purpose of this analysis is to examine the effectiveness of some of these restrictions.

The ability to identify between different segments of passenger air travel demand is an extremely powerful marketing tool as it permits the carriers to develop product, pricing, promotion and distribution strategies specific to the requirements for various types of travel. In Canada, various product and pricing configurations have evolved on both charter and scheduled carriers in recognition of identifiable target markets. This involvement has transpired within a regulatory environment which differs between charter and scheduled carriers and emphasizes the necessity of segmenting the market and establishing target markets.

The air passenger transport market can be broadly segmented into two major segments: on-demand and discretionary. The on-demand segment consists of passengers who due to the nature of their trip requirements are time sensitive. Such passengers require convenience and flexibility in trip making arrangements for which they are willing to pay full fare. The majority of on-demand passengers are travelling for reasons of business; a small portion travel for reasons of emergency. The attributes sought by this market segment have traditionally been provided by scheduled carriers. The discretionary market segment consists of those passengers who are price sensitive and could be encouraged to increase at their discretion their demand by varying price levels. These passengers, due to the nature of their trip requirements, generally make their plans well in advance and are relatively firm in their intentions thereby requiring little need for an opportunity to make changes in their travel arrangements.² The majority of discretionary air passengers travel for reasons of vacation/pleasure and/or to visit friends and relatives. Charter carriers have concentrated on this market segment. In recent years, scheduled carriers have also developed products within their scheduled framework to meet this demand.

This analysis looks at the various restrictions defining air fare products designed to maintain a distinction between the market segment requiring convenience and flexibility and the market segment sensitive to price levels. The concern of the analysis is to assess the effectiveness of restrictions applied to the sale of low-priced air fares which inhibit those travellers requiring convenience and flexibility from being able to use the low fare and which permit the additional travellers willing to pay the low fare to participate in the market.

Since the introduction of low-priced air fares in Canada, various travel restrictions (fences) have been developed and implemented. These fences can be broadly segmented into two different types: trip-related fences and amenity-related fences. Trip-related fences refer to restrictions which affect an air passenger's ability to optimize time and flexibility in trip making arrangements. Amenity-related fences refer more to the service and comfort available on an air trip once arrangements to travel have been made. A listing of major fences and their relative effectiveness as developed by the Boeing Commercial Airplane Company is provided in Table A; the distinction between trip-related fence types and amenity-related fence types has been added by the Research Branch of the Canadian Transport Commission.

² There are some passengers who are not necessarily price sensitive and whose trips are not discretionary (e.g. attendees at business conferences) but who, because of the nature of their travel - known far in advance/fixed duration, can still take advantage of many lower fares aimed at attracting the discretionary market segment.

Analysis of Table A indicates varying degrees of relative effectiveness among the trip-related fences in minimizing the diversion of the business traveller³ to lower priced air fares. Of the five fences listed as very effective, a minimum advanced booking is the most prominent one used today. The advance booking fence not only effectively limits the diversion of business travellers but also only minimally restricts the participation of the pleasure traveller in the market. Same week departure flexibility, also shown as very effective, refers to a situation where the airline would have the flexibility of scheduling a passenger's flight at any time during a week. This fence as well as same day departure flexibility, which is most helpful in assisting an airline to match capacity with demand is not widely used. It is reasoned that the departure flexibility fences, although shown as having little effect on pleasure travellers in the Boeing table, do not allow either the business traveller or the pleasure traveller sufficient control over his/her flight making arrangements and may introduce a costly administrative burden. It is of interest to note that flexible departure fences would be somewhat similar to a situation where a pleasure passenger booked an advanced booking charter flight which was subsequently cancelled due to low initial load factors and consolidated with a flight at a later date -- a situation which itself is becoming less and less common presumably, in part, because of the inconvenience to the travelling public. Fences such as no interlining or limited stopovers and minimum group size are also shown by Boeing to be very effective in limiting the diversion of business travellers but at the same time having moderate effects on pleasure travellers.

Further evidence regarding the effectiveness of fence types has been developed from the CTC Canadian Air Passenger Survey of August, 1982. Trip-related fences dealt with in this survey were as follows:

- i) minimum advanced booking
- ii) minimum stay
- iii) round trip requirement
- iv) trip change penalties
- v) trip cancellation penalties
- vi) limited stopover
- vii) departure only after 10 o'clock in the evening.

Amenity-related fences dealt with included:

- i) no meal and beverage service
- ii) limited baggage handling
- iii) sit in a separate section at the back of the aircraft
- iv) buy tickets in person or through a travel agency.

³ It is noted that the broad classification of business/pleasure does not correspond to the on-demand/discretionary segments. Many business travellers could exhibit strong discretionary characteristics just as many pleasure travellers could exhibit on-demand characteristics. Nevertheless, the Boeing data is presented since, on balance, business travellers are relatively more flexibility/convenience sensitive and pleasure travellers more price sensitive.

Results from the August, 1982 passenger survey regarding surveyed passengers' reactions to individual fences are presented in Table B. Both passengers using the low-priced Skybus/Skydeal, One Way/One Day Skysaver air fares and Economy fare passengers were asked if the addition of a particular fence would have affected their willingness and ability to take their present trip.

It was therefore possible to measure the effectiveness of a particular fence in terms of its ability:

1. to discourage air travellers who would normally require and pay for the convenience and flexibility of frequent scheduled air travel from taking advantage of low fares: this may be expressed as the minimization of fence jumping by on-demand passengers; and
2. to allow as many new passengers as possible to enter the market who would not have done so at normal fare levels. This may be expressed as the minimization of fenced-out low fare demand.

With this criterion in mind -- the minimization of fence jumpers and fenced out demand -- an examination of Table B demonstrates a distinct difference in the effectiveness of the various fences.

Among the observations to be drawn from the table:

1. Amenity-related fences are not as effective as are trip-related fences.
2. Particularly effective fences are minimum stay requirements (of at least 6 nights or until at least the first Sunday) and fences preventing trip cancellations or changes to times or dates of travel.
3. Advance booking requirements in the range of 7-21 days are similar in terms of effectiveness as defined.

Although the requirement to book return travel does not in itself appear as an effective fence, it is noted that this fence is associated with minimum stay requirements (i.e., as a method of effecting them) and it may also be related to advance purchase requirements (i.e., the issue of whether or not such a requirement applies to the booking of outbound travel only or to the booking of both outbound and return travel).

It is also observed that a portion of the Skybus/Skydeal, One Way/One Day Skysaver passengers were not fully aware of the conditions attached to their travel. Although not evident from this table, this is represented by the number of Skybus passengers travelling on CP Air who were unaware they would be sitting in a separate section "at the back of the aircraft". It may be suggested

that such amenity-related fences are not well explained, especially if they imply less service rather than more service. As such, amenity-related fences (particularly of a negative kind) may not be well understood by the travelling public and thus not able to play as an effective role in market segmentation as trip-related fences.

Table C outlines the effects of each individual fence on Skybus/Skydeal, One Way/One Day Skysaver passengers only in more detail. Passengers are designated as either stimulated or diverted from the Economy fare. The stimulated passenger can either accept a fence and continue to travel on the Skybus/Skydeal, One Way/One Day Skysaver products or be deterred by that fence and hence excluded from the market. Note is made that by definition the stimulated passenger will only travel at the Skybus/Skydeal One Way/One Day Skysaver price level. In the case of the diverted passengers faced with a fence alternative, they can either accept a fence and maintain their Skybus/Skydeal, One Way/One Day Skysaver fare or reject it and travel at the higher fare.

In terms of the impact of individual fences, Table C suggests that when the price of the product is held constant, the incremental addition of a fence serves to reduce traffic carriage (as also shown in Table B) and appears to affect proportionately both the stimulated and diverted passengers such that the resulting product stimulation/diversion ratio remains relatively stable. It may be postulated that the stability of the weakly constrained, deeply discounted products' stimulation/diversion ratio relates to the fact that the Skybus/Skydeal/One Way, One Day fares had many of the attributes of an "on-demand" fare offered at a low price. As such, and as is evident, it attracted passengers who, whether defined as stimulated or diverted, on-demand or discretionary, demanded a certain and similar degree of trip making flexibility. The incremental addition of a fence thus impacted similarly on the two classes of passengers as defined by their willingness to pay more for a particular trip.

Recent survey work carried out by the Research Branch casts some further light on this particular finding. In 1983, two prominent low-priced air fare campaigns, the Weekend Seat Sale (available during the spring) and the initial B-767 introductory fare (available from 9 May to 20 June, 1983), were introduced by domestic carriers. Major results from the surveys of these two fares are compared with the Skybus/Skydeal, One Way/One Day Skysaver results in Table D. The higher fence levels and higher price discounts associated with these latest products and the resulting impact on the comparative stimulation/diversion ratios as well as the number of business travellers able to use these new air fares is quite evident. It is also noted that in each case a "built-in" advance booking phenomena appears to take effect, with the average market pre-booking period exceeding the carrier established advanced booking requirements.

The interpretation of these recent surveys is interesting in light of the Skybus/Skydeal; One Way/One Day Skysaver results which indicated at a given price level a proportionate number of diverted and stimulated passengers may be excluded from the market. The two recent air fares, however, represent products defined by higher fences and higher discounts. The results suggest that the price sensitive traveller (i.e., the stimulated passenger) may, notwithstanding stricter fences, be enticed in greater numbers into the market place by a greater discount. The same is not true for the fenced out passenger with the stronger requirement for on-demand services.

On the basis of this limited information, there appears therefore to be a trade-off between low fences and relatively moderate price discounts (i.e., a product which would then be characterized more by the diversion of passengers who would otherwise be willing to pay more for their travel, than by the stimulation of new passengers) and higher fences and higher discounts (i.e., a product characterized by relatively little diversion of on-demand passengers and more by the stimulation of new passengers to the market).

Table A

DIVERSION CONTROLS

	<u>BUSINESS TRAVELLERS</u>			<u>PLEASURE TRAVELLERS</u>		
	<u>Very Effective</u>	<u>Moderately Effective</u>	<u>Little Effectiveness</u>	<u>Very Effective</u>	<u>Moderately Effective</u>	<u>Little Effectiveness</u>
<u>Trip-related fences</u>						
Minimum advanced booking	X					X
Same week departure flexibility	X					X
No interlining	X				X	
No or limited stopovers	X				X	
Minimum group size	X				X	
Minimum stay		X			X	
Trip change penalties		X				
Same day departure flexibility		X				X
Standby seating		X				X
Round trip requirement				X		X
Prepayment				X		X
<u>Amenity-related fences</u>						
Reduced seating space and comfort		X				X
Limited or no meal and beverage service		X				X
Pay extra for food and beverage service		X				X

Source: "Discount Fares and the Potential for Profit and Loss"
Boeing Commercial Airplane Company

Table B

PASSENGER REACTIONS AS FENCES ARE INTRODUCED INDIVIDUALLY

	Skybus/Skydeal, One Way One Day Skysaver Pass- engers <u>Not</u> Able And Will- ing To Travel If Fare Required That Passenger	Full Fare Pass- engers Able And Willing To Travel If Fare Required That Passenger	Raw Cumulation	Scaled Cumulation (A)
TOTAL PASSENGERS SURVEYED.....	1 083	373		
	§	§		
	----	----		
AMENITY-RELATED FENCES				
Sit in separate section at back of aircraft.....	16	74	90	7.18
Check in only one piece of luggage.....	13	78	91	7.44
Do without meal service during flight.....	12	78	90	7.18
Buy tickets in person or through travel agency..	11	80	91	7.44
TRIP-RELATED FENCES				
Leave only after ten o'clock in the evening.....	50	32	82	5.13
Take one hour longer due to stop over.....	35	37	72	2.56
Book this flight:				
- 45 days in advance.....	72	13	85	5.89
- 21 days in advance.....	55	25	80	4.62
- 14 days in advance.....	38	40	78	4.10
- 7 days in advance.....	19	59	78	4.10
Stay away on this trip:				
- at least 6 nights.....	29	35	64	0.51
- until at least the first Sunday.....	25	39	64	0.51
- at least 3 nights.....	15	57	72	2.56
- at least 2 nights.....	9	72	81	4.87
Book both departure and return flight.....	22	79	101	10.00
Receive no refund if passenger cancels trip.....	23	39	62	0.00
Book flight allowing:				
- no change to time and date of travel...	26	42	68	1.54
- change for \$100.....	21	66	87	6.41
- change for \$30.....	8	83	91	7.44

(A) The raw cumulation is scaled between 0 and 10 where 0 represents the most effective fences and 10 the least effective, when effectiveness is measured by the fence's ability to minimize the number of full fare passengers able and willing to meet the fence and the number of Skybus/Skydeal, One Way One Day Skysaver passengers not able and willing to meet the fence.

Table C

THE EFFECT OF INTRODUCING FENCES INDIVIDUALLY ON SKYBUS/SKYDEAL
ONE WAY/ONE DAY SKYSAVER PASSENGERS WHEN THE ALTERNATIVE
FARE IS FULL ECONOMY

	ACCEPT FENCE	DIVERTED REJECT FENCE TRAVEL AT ECONOMY	ACCEPT FENCE	STIMULATED REJECT FENCE DON'T TRAVEL
Σ Distribution Of Skybus/Skydeal, One Way/One Day Sky saver Passengers From August, 1982 Survey	46	-	54	-
Σ Distribution Of Skybus/One Way, One Day Sky saver Passengers If Product Required That One	39	7	45	9
Sit in separate section at back of aircraft	40	6	47	7
Check in only one piece of luggage	41	5	47	7
Do without meal service during flight	42	5	47	6
Buy tickets in person or through travel agency	37	10	40	13
Receive no refund if passenger cancels trip				
Book flight allowing:				
No change to time and date of travel	35	12	39	14
Change for \$100	38	8	41	13
Change for \$30	44	3	48	6
Leave only after ten o'clock in the evening	22	24	28	26
Take one hour longer due to stop over	29	17	36	18
Book this flight:				
45 days in advance	14	32	14	40
21 days in advance	21	25	24	30
14 days in advance	29	17	33	21
7 days in advance	37	9	44	10
Stay away on this trip:				
at least 6 nights	30	16	41	13
until at least the first Sunday	32	15	43	10
at least 3 nights	37	9	48	6
at least 2 nights	41	6	50	3
Book both departure and return flight	36	10	42	12

All percentages based on 1,083 passengers travelling on the Skybus/Skydeal, One Way/One Day Sky saver products.

Source: C.T.C. Canadian Air Passenger Survey, August, 1982.

Table D
PRODUCT CHARACTERISTICS AND SELECTED SURVEY RESULTS FOR RECENT LOW-PRICED AIR FARES

Product	Discount Off Y Fare During Survey Period	Advanced Booking	Min/Max Stay	Change Penalty	Cancel Penalty	Other		Stim/ Div (C)	% Travelling for Business Reasons	Average Pre-Booking	Average Nights Away
Skybus/Skydeal One Way/One Day Saver	28-42% (A)	none	none	\$30	no refund	- no meals - 1 piece of luggage		54/46	27	25 days	10 nights
Weekend Seat Sale	56-77% (B)	21 days	at least 1st Sunday for traffic com- mencing on a Friday or Saturday; at least 1st Saturday for traffic com- mencing on Sunday	\$30	no refund	- outbound travel can only occur between 21:00 hrs Fridays and 12:01 hrs Sundays		93/7	5	68 days	13 nights
B-767	62-68%	14 days	at least 1st Saturday over- nite/30 days	no changes allowed	no refund	- no meals - luggage additional at \$5 each		85/15	13	31 days	8 nights

(A) Except Calgary-Victoria route which was discounted by 61%.

(B) Except Moncton-Ottawa route which was discounted by 46% and the Ottawa-Halifax route which was discounted by 50%.

(C) Stimulation/Diversion.

Chapter 4

Domestic Charter Retail Pricing

Introduction

Domestic advance booking charters are provided pursuant to a contract between the air carrier and a charterer or charterers and subject to the provisions of Part V of the Air Carrier Regulations. The charterer or charterers contract for the entire passenger seating capacity of the aircraft and then resell this space to the public either directly or through agents of the charterer or tour operator.¹

In terms of retail prices, charter carriers do not deal directly with the public but with charter operators who set the retail price. This distinction is not readily apparent in the eyes of the public, particularly when the charterer and the carrier are often subsidiaries of the same parent company.

The major regulatory control in respect of the ABC retail price contained in the Air Carrier Regulations is a minimum price requirement preventing a charterer from selling a seat at prices lower than the cost of chartering the seat from the air carrier plus a markup to cover the charterer's cost in the sale of the ABC seat. Aside from this restriction, charter tour operators are free to set peak and off-peak retail prices as well as to raise or lower such prices and are under no obligation to advise the Air Transport Committee of the original retail prices or subsequent changes.

Specifically, this minimum price requirement is effected through a regulation which specifies that every contract between an air carrier and a charterer must contain a provision that

"... the price per seat for the ABC (domestic) transportation set by the charterer shall not be less than the sum of

- (i) the per seat pro rata aircraft charter cost of the block of seats contracted for by him on that ABC (domestic), and
- (ii) a markup which shall, in the aggregate, cover the charterer's costs incurred in the sale of ABC (domestic) transportation under the contract, including the cost of unsold seats over the life of the contract."²

¹ In this chapter, the terms charterer and tour operator are used interchangeably.

² Paragraph 97(1)(a) of the Air Carrier Regulations, C.R.C. 1978, c.3., as amended.

Domestic inclusive tour charters are also provided pursuant to a contract between the air carrier and one or more tour operators for use of the entire passenger seating capacity of the aircraft for resale to the public at a per seat inclusive tour price. This inclusive tour price includes charges for transportation plus a ground package (accommodation and miscellaneous tour features). The addition of a ground package is the major pricing characteristic which distinguishes ABC and ITC transportation.

In terms of ITC retail prices, the regulatory control is essentially the same as for ABC retail prices, i.e. a minimum price requirement is established below which an inclusive tour may not be sold. Specifically, the tour operator agrees in the charter contract that inclusive tours will not be sold at less than the per seat price (based on tariff rate and distance travelled) plus an add-on equal to \$16 times the number of nights of accommodation (minimum of \$60, maximum of \$160).

This chapter will discuss the jurisdiction of the CTC, the effectiveness of controls over the (minimum) retail price and the marketing of charter air fares as well as present options for retail price regulation. Although the discussion has been written in respect of ABC (domestic) it is equally applicable to ITC (domestic) transportation, aside from the specific regulations pertaining to ABC (domestic) such as rebooking, late booking and cancellation penalties.

Jurisdiction of the Canadian Transport Commission

The Canadian Transport Commission derives its power to make regulations directly from section 14 of the Aeronautics Act (1970, RSC, c.A-3 as amended). There does not exist a specific paragraph that addresses itself to the matter of prices established for air transportation by charterers or tour operators. However, paragraphs (m) and (n) do deal specifically with the power of the Commission to make regulations concerning traffic, tolls and tariffs and "the manner and extent to which any regulation with respect to traffic, tolls or tariffs shall apply to any air carrier licensed by the Commission".

The Commission, through its Air Transport Committee, exercises direct control over the tolls charged by an air carrier to one or more charterers for the charter of the entire passenger seating capacity of the aircraft. These tolls are filed with the Committee which may:

- (a) suspend or disallow any toll;
- (b) require the air carrier to substitute a satisfactory toll; or
- (c) prescribe a toll in lieu of one which is disallowed.

Moreover, once such tolls come into effect³, they constitute the air carrier's only lawful tolls and no rebate, concession or discrimination, by any device whatever, may be made in respect of the filed tolls. No air carrier can operate an ABC (domestic) unless it has filed a tariff in effect on the date the contract with the charterer is signed and applicable to the transportation covered by the contract and the amount charged to the charterer cannot be other than the price calculated in accordance with that tariff.

The Commission, through the air carrier, sets out conditions with respect to the actions of the tour operator in such matters as reservations, ticketing, public solicitation and minimum retail price. This is accomplished by requiring the air carrier to include in every charter contract certain prescribed provisions and in turn to provide the Committee with an executed copy of the contract as part of its application to perform the domestic ABC.

Over the years, there has been considerable debate within the industry over whether or not the Committee has the power to regulate tour operators, either directly or indirectly.

One argument in support of this indirect regulation is that one of the main functions of the Commission as per the Aeronautics Act and the National Transportation Act is to authorize the operation of commercial air services through the issuance of licences⁴. Section 16 of the Aeronautics Act clearly identifies this function. Accordingly, it would be within paragraph (q) of subsection 14(1) of the Act for the Commission to make regulations respecting permits to operate commercial air services inasmuch as such regulations would be for the purpose of carrying out that part of the Aeronautics Act. It follows that the regulations in respect of permits would set out what the applications by air carriers for such permits shall contain. One of the things that the Committee requires to be included in the application for a permit is a description of the arrangements respecting minimum retail prices by the party or parties to the contract for ABC services. Certainly tour operators are being affected by this form of regulation but then so are the travelling public, and in a much less direct way travel agents, hotel owners, car rental firms, etc. The regulations that have been made are for the regulation of charters but as a result persons other than air carriers will be affected as well. The proponents of indirect regulation would argue that any party directly associated with the charter should be affected by the Regulations and that such indirect regulation is not only a realistic interpretation but its absence would severely restrict the Committee in its administration of charters.

³ ABC tolls filed with the Committee must be filed to become effective upon not less than 45 days' notice and must remain in effect for at least 6 months unless otherwise authorized in writing by the Committee.

⁴ The Aeronautics Act defines a licence as including "a temporary licence or permit to operate a seasonal, emergency or occasional commercial air service".

It has also been argued that the Committee has the power under the Aeronautics Act to directly regulate tour operators. In its letter of March 13, 1978 in response to "proposed amendments to International Charter Rules of the Air Carrier Regulations" issued by Committee letter of December 12, 1977, Air Canada made the following statements:

"It is noted, in addition, that the Commission has chosen not to exercise the jurisdiction that Air Canada submits it has with respect to tour operators or, as they are called in the United States, indirect air carriers. Previous submissions have made the point that under the present Aeronautics Act, specifically under the definitions of "air carriers," "commercial air service," and "hire or reward" contained in that Act, there is no doubt that jurisdiction can be exercised directly over tour operators. At the present time, the Commission exercises its jurisdiction indirectly through the air carrier. This results in an unacceptable situation in which a carrier can suffer penalties for the misdeeds of a party over which that carrier has no control".

On the other hand, in response to the same proposal for retail price control, Suntours Ltd. by letter dated March 14, 1978 from its solicitor Mr. E.T. Nobbs adopted the opposite view of the legislative authority over retail prices set by tour operators. Suntours submitted that:

"The ATC may well not have the authority or jurisdiction to enact the Amendments. The authority of the ATC to enact regulations is derived from Section 14(1) of the Aeronautics Act. It is questionable whether the ATC has the authority under Section 14(1) of the Aeronautics Act to regulate in regard to retail pricing and/or capacity. In addition thereto, there is at best some doubt as to whether a Federal body, in any event, has the jurisdiction to regulate the actions of the charterer and the retailer in selling its product to the public".

The corollary to Suntour's arguments is that the Committee is trying to do indirectly what it may be prohibited from doing directly. In not having the authority to regulate tour operators, any regulations the Committee makes that effect or require anything of those operators are outside its jurisdiction and accordingly such regulations are invalid. The proponents of this argument view consumer protection as largely the concern of other federal and

provincial departments and provincial travel authorities. Provided that the air carrier receives full payment from the charterers for the domestic ABC prior to departure, it may be difficult to justify the Commission's intrusion into the dealings between the charterer and the passenger.

It could also be argued that the issue of jurisdiction could be considered a constitutional one: Does the jurisdiction to⁵ regulate tour operators belong (exclusively) to the provinces or is it open to the Federal Government to also assert jurisdiction over tour operators either as a Trade and Commerce matter or as a matter necessarily incidental to aeronautics?

Effectiveness of Controls over Minimum Retail Price

As stated previously, the Committee has established regulations whereby the actions of the charterer are regulated through specific contract provisions which the air carrier must include in every contract for ABC transportation. One of these provisions is that the retail price set by the charterer shall not be less than the cost of the seat to the charterer plus a reasonable markup. Not only is this markup left unspecified but it is an aggregate markup, that is, over the sale of all seats during the life of the contract. In other words, the markup may be negligible in specific instances, provided that it is sufficient, when aggregated over all sales, to cover the charterer's costs incurred in selling the ABC seats, including the cost of unsold seats.

The Air Carrier Regulations do prescribe certain penalties for contraventions of any regulation. Firstly, the air carrier, after a show cause procedure, could be prohibited from operating the domestic ABC by cancellation by the Committee of some or all of the permits issued pursuant to section 109. Alternatively, the Committee could initiate summary conviction proceedings against any person who allegedly contravenes the Air Carrier Regulations pursuant to section 161. However, to penalize the air carrier for the actions of a tour operator, that it lawfully contracted with, appears to be plainly inequitable. Moreover, a possible suspension or cancellation of permits would, in many cases, be contrary to the public interest since passengers with reservations on the affected flights would be forced to alter their travel arrangements.

There is also some doubt as to whether the sale of seats at prices below the minimum seat price established by the Air Carrier Regulations is in fact a contravention of the Regulations. The air carrier has apparently satisfied the Air Carrier Regulations by including the required clause in its contract with the charterer.

⁵ The provinces of B.C., Ontario and Quebec have enacted legislation regulating the activities of tour operators.

The tour operator, by selling seats at prices below his cost, has violated his contract with the air carrier and would be subject to action by the air carrier for breach of contract, not for any violation of the Air Carrier Regulations. The question to be asked is to what extent can the carrier be required to enforce its contract and what the role of the Committee should be in this respect?

This problem of enforcement is further complicated by the realities of the marketplace. While the charterer or tour operator may also be a retailer who sells seats directly to the public, it is more likely that the tour operator is a wholesaler who contracts with third parties who then deal directly with the public for the sale of all or a portion of the seats. Thus, there would exist no contractual arrangement between the air carrier and the third party (travel agent) and hence no effective means for any control by the air carrier or the Committee. Moreover, to penalize an air carrier for the actions of an agent of a tour operator that it lawfully contracted with appears to be somewhat awkward, if not unjust, especially if the agent acts for a large number of tour operators, each having contracts with a number of air carriers. Air carriers would be penalized for actions of others over which they have little, if any, control and under certain circumstances the carrier might even be prevented from exercising such a control by the contract between the tour operator and the travel agent.

Although situations do exist where price reductions are warranted to stimulate traffic or to minimize losses on a program that may be only marginally sold but too fully booked to cancel⁶, the lack of an effective pricing control has, in the past, been readily apparent. For instance, during the winter of 82/83, it was brought to the attention of the Committee both through direct complaints and through newspaper advertising that charter seats were being dumped on the market at the last minute at prices well below the minimum seat price. Some notable examples were a \$99 return air fare to Florida, Jamaica and Bermuda from Toronto. In an attempt to put a stop to the dumping and illegal discounting by "last minute clubs" and out of a concern for its effect on the industry, Canadian and foreign air carriers were directed to confirm that charter flights were not being operated at less than filed tariff rates (price paid by charterer) and to obtain confirmation from each tour operator that it will not sell seats at a price which is below the minimum specified in the contract. Notably, tour operators were not asked directly for such confirmation nor were travel agents included in the Committee's directive.

An assessment of the effectiveness of the above Committee action in the case of last-minute clubs is inconclusive. Although the widespread availability of such illegal discounting was greatly

⁶ It should be noted that the air carrier must be paid in full for the entire seating capacity prior to departure.

reduced, this was perhaps more likely due to a reduction in available capacity through flight cancellations, consolidations and the use of smaller aircraft than as a result of the actions of the Air Transport Committee.

The difficulty in enforcing pricing controls is readily apparent when one considers the issuance of tickets for charter transportation. Whereas tickets for scheduled transportation are issued by the air carrier, it is the tour operator who issues the charter ticket. Upon signing the contract, the tour operator is provided with a supply of the air carrier's ticket stock for use in the sale of domestic ABC transportation. These tickets are normally partially completed, i.e. charterer's name, origin, destination etc. The charterer is required to fill in the flight dates, passenger's name, price, etc. In practice it has been found that the pricing details, especially rebooking and late booking charges, are often not completed by the charterer.

Marketing of Charter Air Fares

Public solicitation and sale of domestic ABC transportation can now occur as soon as a contract is signed between an air carrier and a charterer provided that such activity is undertaken with prospective passengers being made aware that the transportation offered is subject to approval by the Air Transport Committee. Upon executing an ABC (domestic) contract, the air carrier is required to provide a copy of it to the Committee. This is roughly equivalent to the rules governing scheduled air fares which allow advertising and sale as soon as tariffs are filed with the Committee.

Aside from the aspect of retail prices, charter and scheduled air fares are differentiated by the treatment of gimmicks, rebates and promotions such as free flight bags, car rentals and discount coupons. In the case of scheduled transportation, these marketing tools are tightly regulated and must be contained in tariffs on file with the Committee. Any deviation from filed tariffs by any device whatever is expressly prohibited (see subsection 112(10) of the Air Carrier Regulations). On the other hand, there are essentially no such restrictions placed on charter transportation. In practice, no concern is expressed unless the value of the rebate or concession is such that the net price paid to the charterer is less than the minimum price per seat established by the Regulations. To illustrate this point, one marketing tool employed by charterers is the offering of a connecting scheduled flight, either free or at a reduced price. The scheduled carrier is paid its applicable tariff by the tour operator, and the net price paid by the passenger (after subtracting the scheduled fare), still exceeds the minimum seat price. Assuming any advertising is clear and definite as to the arrangements, there is no apparent contravention of any regulatory provision.

In addition to the retail price per seat established by the tour operator, a passenger is required to pay:

- . a late booking charge for reservations made after the expiry of the advance booking deadline; and/or
- . a rebooking charge for changes to reservation after the expiry of the advance booking deadline or to permit an open return date.

The Air Carrier Regulations require the air carrier to specify rebooking and late booking charges in its tariffs as a percentage of the per seat pro rata charter cost or as a specific amount. An amount not less than the charge specified in the carrier's tariff must then be paid by or on behalf of the passenger in addition to the price per seat. The tour operator or travel agent may establish specific amounts and modify or schedule rebooking and late booking charges provided the minimums are respected and without any prior notice to the Committee. In practice however, such charges are normally assessed by the tour operator at the levels specified in the air carrier's tariff.

Rebooking charges in filed tariffs are generally in the order of \$20. By comparison, the rebooking charge for deep discount scheduled fares (discounted more than 25% from lowest unrestricted public fare) is generally \$30 (to comply with A.T.C. Decision No. 6869 dated August 19, 1982). Late booking charges on the other hand may be as low as \$1. This level may be justifiable in terms of costs but appears to be at odds with the concept of late booking charges as a means for the air carrier to increase its yield by access to the higher paying must-go traveller.

Another marketing tool worthy of mention is the use of cancellation penalties which are assessed by the charterer relative to the retail price per seat. Specifically, the charterer must set a cancellation penalty of not less than 10 percent of the retail price but is free to set higher amounts as desired. By comparison, deep discount schedule fares generally include a cancellation penalty of \$30 but on occasion a 100% cancellation penalty may be imposed.

Options for Retail Price Regulation

It has become abundantly clear that the Committee's attempts to regulate retail prices by indirect means (i.e. through the air carrier) have never been fully effective. The lack of charter price regulation is a most obvious regulatory anomaly which warrants serious consideration and which affects the integrity of the whole regulatory structure since similar if not identical transportation is being offered on scheduled services, the prices for which come with the direct control of the Committee. Thus, while new or additional regulations in respect of scheduled fares may be promulgated to

promote an economic, efficient and adequate air transportation system, such effort could prove futile because of the ability of charter operations to thwart the objectives of scheduled fare policies. The extent of regulatory control must be more balanced concerning what fares the public pays for similar transportation on scheduled and charter services.

The requirement for similar treatment is further strengthened when one considers the impact of vertically integrated companies, i.e. tour operators and carriers as subsidiaries of the same parent company. From its inception, one distinction between charter and scheduled services was the requirement for a middleman to purchase the entire capacity of the aircraft in the case of charters for resale of individual seats to the public. This distinction has disappeared with the acceptance of subsidiary companies which perform this function.

Without intending to restrict the Committee's options for the resolution of the dilemma of ineffective regulation of retail prices for ABC transportation, the following alternatives are presented for consideration:

1. Removal of Minimum Price Regulation

If one were to adopt the view that the Committee is prohibited from directly regulating tour operators and that indirect regulation through contract provisions is ineffective and inequitable, then one alternative is to remove from the Air Carrier Regulations any pretense of control.

2. Precise Specification of Minimum Markup

Assuming that indirect regulation continues, a minimum markup could be specified in charter contracts. This would ostensibly require the charterer to price the ABC seat at a reasonable level. This minimum markup which by extension would be a minimum retail price would also have to be set in respect of each seat rather than "in aggregate" over the entire program. However, being a contract provision, it would suffer from the same reservations as exist in the present regulatory approach. Moreover, it may be difficult to establish a universal markup which would not require periodic or ad hoc revisions.

3. Specification of a Minimum Retail Price

A minimum retail price could be specified directly in contracts or in the air carrier's filed tariffs. In the latter case, the prices would be subject to compliance with section 113 of the Air Carrier Regulations - just, reasonable, non-predatory, etc. The charterer would be free to price at levels above this "wholesale" price. This would introduce some stability into the market by reducing existing down pressures on retail prices via unrealistically

low markups. On the other hand, it may be impossible for the carrier to require the charterer to abide by a tariff which restricts the wholesaler's flexibility in adjusting prices downward in response to demand and changes in the marketplace. While specification of minimum retail prices in contracts would be an improvement over the present system and would be essentially similar to the definition of a floor price for ITC's, there would exist the historical enforcement problem related to contract provisions.

4. Allow/Require direct sales by Air Carrier

The air carrier would be permitted or even required to publish retail prices in its tariff which would establish the price paid by the passenger. Under this scenario, the "charterer" is really an agent of the air carrier. Alternatively, some allowance could be made for contract sales to tour operators for all or a portion of the aircraft. Essentially, this is what exists at the present time due to the use by air carriers of subsidiary companies as charterer's but with enhanced control over retail prices. On the other hand, marketing flexibility would be reduced due to regulatory requirements in respect of the filing of tariffs.

Chapter 5

The Erosion of a Distinction Between Domestic Resaleable Charters and Scheduled Services

As revealed in the first chapter, numerous and some very fundamental changes have occurred to the ABC (domestic) regulations since their inception in early 1978. The changes affecting travel conditions and operational restrictions may be recapitulated as follows:

Purchasers of ABC (domestic) transportation need no longer make unchangeable reservations at least a month before departure date and stay away from home at least 6 days. Today, it is possible to obtain a seat on a domestic ABC within hours of departure and return as soon as the following Sunday. The return date, which was once firmly set at time of booking, can now be left open upon payment of a rebooking fee. Moreover, the outbound reservation may also be changed upon payment of a rebooking fee.

From the air carrier's viewpoint, he can now charter as few as 20 seats of his aircraft to charterers and operate one flight, or a series of flights from two points of origin to two points of destination. The carrier can also charter bellyhold cargo space, excess to the passengers' needs, for subsequent resale at a toll per unit. Finally, the carrier can charter part of the seats on the same aircraft for ABC (domestic) transportation and the remainder for ITC sale.

The charterer can opt to permit passengers to change their reservations upon payment of a rebooking fee, provide seats on daytime flights without the passenger prebooking (subject to the passenger paying a late booking fee) and offer a passenger the opportunity to return to his point of origin from a city different from the one to which he travelled on his outbound journey.

Thus it is readily apparent that former travel conditions and operating restrictions that once clearly separated charter operations from scheduled services have faded considerably, and have disappeared from the view of the discretionary air traveller. Now eligibility and travel limitations (fences) are similar for travel on ABC (domestic) flights and at discounted fares on scheduled services.

In any case, fences are an outward and, in some instances, artificially imposed distinction between charter and scheduled services. A more important distinction related once to the essence of the charter concept: that the air carrier sold the entire capacity of its aircraft and the charterer took care of seat sales, profiting if all seats were occupied, but assuming the loss for underload. Pursuant to the Regulations the charter rate due to be paid to the air carrier was independent of actual passenger loads. This appeared to be an attractive business arrangement in principle yet it seldom, if ever, worked in practice. Charterers normally lacked the financial strength to bear significant risks arising out of underload; at the same time, they had considerable leverage with

the air carrier as they were in command of the marketing of series of flights extending often over a complete travel season. If the charterer cancelled or defaulted, the charter air carrier's aircraft would be idle and its image might be seriously damaged or permanently ruined. The charter air carrier, then, had little choice but to share in, or to fully assume, the risks for the operation and marketing of its ABC or ITC series by forgiving payment of a portion of the charter rate on account of unsold seats when accounts were settled with the charterer. Charter air carriers soon realized that independent charterers lost much of their usefulness as business partners and, if they could not guarantee payment of the air carrier's charter rate in accordance with the tariff, the air carrier might as well assume control over the charterer and thus over the promotion, marketing and sale of its flights' capacity. Thus the charter air carriers acquired or founded chartering subsidiaries or set up corporate organizations comprising a chartering and ticketing associated company. Vertical integration had the further advantage that the integrity of the charter tariff was shielded: the chartering and retail arm was reimbursed for losses it unavoidably incurred but the transfer of funds was hidden behind the corporate veil. The losses were unavoidable, since the markup added to the per seat pro rata of the aircraft charter rate seldom covered the charterers costs and the underload.

As noted in Chapter 1, the vertical integration of the air carrier and the charterer was permitted by the Order-in-Council change to the Regulations in 1980. Comparing 1982 with January to August, 1983 we have seen the incidence of contracting by carriers with wholly-owned subsidiaries climb from 68 percent to 79 percent in respect of all ABC (domestic) flights operated. The reality then is that for most domestic ABCs we have the same corporate structures providing the aircraft, marketing the aircraft's space, as well as selling tickets at a toll per unit to passengers; as a consequence, chartering has become a fiction and the charter carriers offer individually ticketed air transportation to the general public. Thus, scheduled and charter operations continue to converge.

Until recently, and notwithstanding the aforementioned changes to ABC (domestic) regulations, the operations of scheduled services were carried on within Canada as separate and distinct from charter operations. A passenger living in a smaller Canadian point who wanted to travel via a domestic ABC to a distant major Canadian city would have had to, in two separate transactions, purchase a scheduled ticket from his home to the nearest city where ABC (domestic) flights were being operated and an ABC ticket for the remainder of his journey. Increasingly, interline arrangements are being concluded between scheduled carriers and carriers operating charter flights whereby a passenger's combined scheduled and charter transportation is written on the same ticket, involving then only one transaction for the passenger and an attractive overall ticket price. Moreover, these scheduled/charter interline arrangements produce more scheduling co-ordination between the carriers involved. This development is further evidence of the erosion of the charter concept insofar as domestic ABCs are concerned.

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The foregoing indicates that, to more effectively promote government aviation policies, regulatory changes more consistent with these policies are necessary. Lack of change would only exacerbate problems that are now being experienced in this regard. For example,

- the determination of adequacy in respect of year-round scheduled services would continue to be extremely difficult, if not impossible, to make;
- retail fares on scheduled services would go on being subject to control by the Committee whereas ABC retail fares would not, causing continued undesirable disequilibrium in the relationship between scheduled services and ABC operations;
- operators and promoters of ABCs would continue to be faced with a significantly disproportionate regulatory administrative burden than their counterparts involved in scheduled services;
- the imprecise and quasi-effective control over ABC intermediaries by the Committee would go on fraught with continued jurisdictional uncertainties between federal and provincial authorities to the disbenefit of the consumer; and
- complex regulations and procedures would have to be maintained and enforced.

Consequently, it appears time that efforts are initiated that will remove the fiction that ITC and ABC (domestic) operations now represent charter flights that are clearly separate and distinct in nature and characteristics from scheduled services. It is time for thoughtful consideration to be given to regulatory changes directed towards:

- the provision of unit toll services catering to the travel needs of all segments of the travelling public with special conditions applying to air travel by discretionary air travellers at preferential fares;
- the maintenance of adequate year-round Class 1 and 2 services;
- the recognition of large scale resaleable passenger charters as unit toll services to which a new classification and special conditions apply, similar to those governing the carriage of passengers at significant discounts on scheduled services; and
- the preservation of charter types where required and where readily distinguishable from all unit toll services, including scheduled flights.

Chapter 6

A POSSIBLE NEW CLASS OF SERVICE

The time is past when scheduled services catered primarily to the higher yield segment of the air passenger market and the charter operators served the lower yield segment within a rigid regulatory framework.

Now in Canada we find charter flights competing more freely and head-on with scheduled services in the provision of low priced air travel between our principal city-pairs. The vacationing public is now hard pressed to discern any meaningful difference between scheduled services and charter operations. Of late, consumers have been able to travel between major markets on either scheduled or charter flights at fares and conditions of travel essentially the same. Thus the former clear distinctions that once existed between charter operations and scheduled services have become increasingly cloudy and difficult to perceive, especially by the consumer of domestic air transportation.

As noted in the first chapter, the last government aviation policy statement was issued by the Minister of Transport in 1978 and dealt with the provision of low-priced air transportation. It called for scheduled and charter services to compete as freely and fairly as possible in serving the leisure travel market. This same policy, however, stressed the need to maintain an adequate frequency of year round scheduled services. Consistent with section 3 of the National Transportation Act and comments made by the former Transport Minister, the Honourable Jean-Luc Pepin, it is felt that a redoubling of effort must be made to maintain an economic, efficient and adequate air transportation system within a regulated environment by ensuring that price and service competition are fostered to the extent possible without endangering either the availability of low priced travel or the maintenance of adequate scheduled services.

A possible new regulatory approach to the provision of low priced domestic air travel on an individually ticketed basis by a new class of unit toll air service is thus discussed within each of the following sections:

1. Capacity/frequency
2. Fares
3. Ticket purchase restrictions and travel conditions
(fences)
4. Marketing restrictions
5. Market entry
6. Operational restrictions
7. Consumer protection

Before discussing each section, it is emphasized that any set of conditions may be imposed on a new class of unit toll licence, taking into account the unit toll nature of the operations conducted thereunder. Thus, a great variety of possible regulatory approaches

exists, from transferring most of the ABC/ITC requirements to the rules governing a new class of service, to devising simplified and streamlined new rules concentrating on essential conditions. The subsequent discussion outlines some of the options, but is illustrative only and may be modified or expanded.

1. Capacity/frequency

When a carrier makes an application for a scheduled unit toll licence between points in Canada, it must, among other things, specify the points it wishes to serve, the type of aircraft it proposes to use and the frequency of service contemplated. This application is then given public notice to afford interested parties an opportunity to support or oppose the application. In addition to the interventions received from interested parties, the Committee also assesses the application to determine whether it meets the requirements of section 16 of the Aeronautics Act. This section mandates that such applications are to prove that the proposed service is or will be required by the present and future public convenience and necessity (PC&N). The Committee may approve it in its entirety, approve it in part or with restrictions (e.g. limitation on number of flights per day), or deny it. A successful applicant is granted a licence, unrestricted or restricted, that authorizes it to provide scheduled unit toll service (Class 1 or Class 2) between specific points.

An applicant for a Class 4, large aircraft charter licence is faced with public and Committee scrutiny of its application as is the unit toll applicant and must prove that present and future PC&N requires granting of a Class 4 licence. However, unlike licensing procedures for unit toll services, Class 4 licences are not issued in respect of specific points other than the Class 4 base, which leaves the holder of such a licence free to apply for a permit to fly as many domestic ABC or ITC flights as it pleases between whatever points it chooses as long as the points are not within a regional air carrier's region described for the purpose in Schedule XV of the Air Carrier Regulations, where the regional air carrier has the right of first refusal. Usually the only capacity restraint relates to the obligation of the carrier to operate an aircraft within the weight groups authorized by its Class 4 licence.

Part B of Chapter 2, discussed possible ways and means by which the capacity of airline seats for purchase by the discretionary traveller might be controlled. It will be recalled that this chapter suggested that an adversary system or a predetermined control system would probably not prove very effective in permitting scheduled and charter services to compete as freely and fairly as possible in serving the leisure travel market while still ensuring the maintenance of an adequate frequency of year-round scheduled services.

The question arises, therefore, why market forces should not be permitted to establish the required supply of domestic air services designed to serve the needs of the leisure traveller. If effective

travel restrictions are instituted and are successful in segregating discretionary travellers, optimization of the air transportation system may be possible without continuous and pervasive regulatory intervention and without losing overall regulatory control and the ability for regulatory intervention when necessary or desirable.

2. Fares

A most obvious regulatory anomaly which warrants serious consideration and which affects the integrity of the whole regulatory structure is the fact that charter retail prices are outside any effective control by the Committee whereas scheduled fares do come within its control. Thus, while new or additional regulations in respect of scheduled fares may be promulgated to promote an even more economic, efficient and adequate air transportation system, such efforts could prove futile because of the ability of charter operations to thwart the objectives of scheduled fare policies. Consequently, it seems central to the whole issue of low priced domestic air travel that the extent of regulatory control should be balanced concerning the fares that passengers pay for scheduled or for charter air transportation.

It seems then that a fundamental regulatory change is worthy of serious consideration; one that would convert the operation of ABC (domestic) and ITC charters into a specialized form of unit toll service where the prices charged the public would be subject to disapproval by the Committee but where the conditions of ticket purchase (fences) would remain similar to those now contained in the charter Regulations. The ability could be retained for a holder of this new specialized unit toll licence to wholesale part of his aircraft's capacity to independent retailers at rates subject to Committee control for resale to the public at fares in accordance with that carrier's tariff filed with the Committee.

An objective of the rearrangement of regulations put forth for discussion in this chapter is to produce a regulatory framework more in keeping with aforementioned government policy statements. It is contemplated that a new specialized unit toll service would be directed at serving the leisure market, leaving the scheduled carriers to serve the non-discretionary traveller and to also compete for leisure passengers.

The specialized unit toll fares would form the base upon which daily monetary add-ons, like those presently contained in the current ITC regulations (but adjusted for inflation), would be used for establishing minimum inclusive tour prices on scheduled services and on specialized unit toll services.

3. Ticket Purchase Restrictions and Travel Conditions (Fences)

As mentioned in the preceding section, a new specialized unit toll service is suggested as a replacement for domestic ABCs and ITCs. If this were to be considered, it would be highly desirable if not essential for the achievement of current Government Policy as well as enforceable Regulations to characterize this new service so as to

integrate more closely the needs of the non-discretionary passenger with the type of service operated. For example, a pre-booking requirement for tickets on the suggested specialized unit toll service would serve to make it accessible only to those that could plan in advance, and that were reasonably certain that there would be little likelihood of changes to their plans. Other travel restrictions currently in the domestic charter regulations, for example minimum stay, could also be considered if they were seen to be useful in differentiating between scheduled service and the suggested specialized unit toll service.

Having indicated the requirement to define the relative roles of scheduled versus a new class of specialized unit toll service so that the market for each will be consistent with what is envisaged by Government Policy and what could reasonably be offered by competing air carriers, it would seem useful to discuss the purpose of travel restrictions and their effect. First and foremost, travel restrictions are seen as a method of segregating the demand so that the scheduled service provided for the must-go traveller, is used by the traveller that needs or wants the flexibility this type of service offers. Thus the restrictions themselves would define the accessibility of a specialized service and therefore its acceptability to non-discretionary travellers. For just as there is not now a single description that fits all "discretionary" travellers, it would seem virtually impossible to develop restrictions that would ensure that only "leisure" travellers use non-scheduled flights irrespective of what they are called. Indeed passengers who could be considered to be "must-go" travellers (in the sense that they have to travel) but who can in fact plan sufficiently far in advance to take advantage of non-scheduled service and who are willing to take the risk that a change in their travel plans may result in financial loss are still willing to book travel restricted fares because of the savings offered, could use this new specialized unit toll service depending upon the restrictions that are established. In addition, travel restrictions would have an impact on the air carrier's cost through the degree to which they constrain the passenger's flexibility and since this would be reflected in the fare to the passenger, it seems clear that the passenger who, on the one hand, is willing to accept travel restrictions should, on the other hand, be entitled to lower cost air travel.

It is apparent that the customary travel restrictions do, in fact, have these outcomes. Pre-booking, the minimum stay requirement, constraints or prohibition on changing reservations, all serve to segregate the demand and help to define the class of service and thereby the type of passenger that would be able to use that service. In addition, the need to purchase return transportation, tends to confine the passenger to one air carrier which again reduces the passenger flexibility but not so as to define the type of service but rather to lower the carrier's costs, enhancing its revenues and thus allowing the carrier to offer a lower priced product.

The question then would seem to be how to blend the travel restrictions so as to define a sufficiently different class of unit toll service that would, to the extent practical, be attractive only to the discretionary passenger but at the same time afford those that would accept the specified limitations, lower cost air travel.

With respect to the current situation, it seems apparent that the generous top-off provisions tend to blur the distinction between scheduled and non-scheduled service. If air carriers offering the suggested specialized unit toll service were required to stop sales well before the departure of a flight, it would strengthen the difference between the two types of service. Or perhaps, a modest top-off (or late booking) facility could be retained if sales after the pre-booking deadline were made to command a significant premium over travel purchased in advance, while other restrictions (minimum stay, etc.) were also to apply to these tickets.

In summary, it would seem that the extent to which effective travel restrictions are imposed is the extent to which the non-discretionary air travel market would be channelled toward scheduled carriers. This seems fundamental to the basic proposition enshrined in Government Policy of the importance of maintaining an adequate frequency of year-round scheduled service where warranted by demand. Insofar as leisure travellers are concerned, whatever restrictions would be imposed upon the specialized unit toll service would also be imposed upon competing scheduled carriers ensuring the ability of both classes of air carrier to compete as equally as possible for the discretionary traveller. Thus, the need would be to define a new specialized unit toll service sufficiently different from the scheduled service with the objective of meeting the needs of discretionary travellers at the lowest possible cost. This would obviate the need to consider the placement of any form of capacity or frequency limitation on carriers offering a specialized unit toll service. It would require, however, the identification of travel restrictions that would be effective in segregating the demand while at the same time preserving the characteristics of the service that would enable it to be offered at a lower cost product to air travellers.

4. Marketing Restrictions

It has become abundantly clear that the current rules governing scheduled deep-discount tariff filings and ABC domestic applications, which permit advertising and sale of tickets attractive to the travelling public subject to the Committee's (or "government") approval, places would-be air travel consumers, the Committee, and by extension, the government, in a very unsatisfactory situation when the Committee determines that a tariff filing or a charter application should be disallowed or rejected.

Perhaps information pertaining to planned domestic tariff filings proposing discounts greater than 25% off the regular economy or standard fare, and all specialized unit toll fares, should be submitted to the Committee sufficiently in advance of their planned filing dates. This procedure would enable the Committee to examine such filings before they would be eligible to be advertised and sold to determine whether they are just and reasonable. Large scale uncertainties for the travelling public would thereby be avoided.

It is anticipated that the carriage of cargo by specialized carriers at unit toll rates between points where passengers are enplaned and deplaned would be allowed. This regulatory freedom now exists in respect of domestic ITC, ABC and ABC/ITC flights.

5. Market entry

Should a specialized unit toll commercial air service be created to replace domestic ABCs and ITCs, it may be appropriate to issue such a licence to those air carriers which now hold a Class 4 licence valid for operating an ABC or an ITC.¹ PC&N would not be required to be proven again by these carriers as they had already done so to obtain their Class 4 licences. Other carriers wishing to obtain a specialized unit toll licence would have to make application for it and would have to prove that the present and future public convenience and necessity requires the granting of the new type of licence. No geographical or point limitations would be contemplated for attachment to specialized unit toll licences. Moreover, those carriers currently holding Class 4 licences and eligible to receive a specialized unit toll licence would be issued with the latter licence in respect of weight groups already authorized, and aircraft restrictions that may now be imposed, on each Class 4 licence.

6. Operational restrictions

Some current operational restrictions placed upon ABC (domestic) operations, such as the limitation to two points of pick-up and two points of drop-off on one flight, would not seem required if the travel restrictions pertaining to specialized unit toll services were strict and immutable. For example, if a new type of specialized unit toll service had a minimum 14 day advance booking requirement (and no top-off) coupled with a first-Sunday minimum stay, it would seem that a restriction as to the maximum number of stops per flight would be unnecessary to impose as higher operating costs per multi-stop flights would work in direct contradiction to the provision of low cost travel. Obviously, night ABCs now permitted to carry last minute travellers would no longer have this flexibility.

In a tightly-fenced specialized unit toll environment, where other current domestic ABC flexibilities such as rebooking options would no longer exist, the need would diminish significantly to consider elaborate regulations respecting other operational matters, e.g. rules requiring applications to be made for permission to operate specialized unit toll services and rules specifying when such services could be consolidated. The reasoning behind this statement is that a strictly-fenced specialized unit toll regime would be supplemental to Class 1 and Class 2 services and that therefore stringent government control over their operations would not be needed.

While Class 1 and Class 2 services are known and expected to be operated on a regular basis according to a published timetable, the same need not be true of a carrier operating a specialized unit toll service. It is anticipated, however, that a specialized unit toll carrier that wished to stay in business would do its utmost to serve the public in a responsible manner. Nevertheless, a regulatory obligation to serve according to a specific timetable would not be imposed. However, specialized unit toll carriers would be required to

¹ Most Class 1 or Class 2 licensees are also licensed to provide Class 4 services as well.

notify passengers within a prescribed time before the departure of a flight when the original time or date has been changed. The carrier would be obliged to offer the passenger a complete refund of all monies paid if alternative arrangements, suitable to the passenger, could not be made. To monitor a carrier's performance for consumer protection purposes, the Committee would require each specialized unit toll carrier to maintain with the Committee a current operating plan.

As mentioned, a tightly fenced specialized unit toll regime would be supplemental to Class 1 and Class 2 services providing services adequate to the needs of the must-go passenger market. The nature of this new service would then be such that the comings and goings of the aircraft engaged in these services should be as free from economic regulations as possible.

While thus far this section has discussed operational restrictions from the viewpoint of the implementation of a tightly fenced specialized unit toll service, it seems logical to suggest that the freer travel conditions associated with a new class of unit toll service may become, the more need there might be for greater operational controls.

In a new unit toll structure where a type of licence would be issued to provide transportation for discretionary travellers, it is foreseen, notwithstanding a round trip requirement, that these passengers should be able to take open jaw return trips on these services in the same manner as described in the current ABC (domestic) regulations. Moreover, it is contemplated that tickets issued for travel on a specialized unit toll service would be transferable between other carriers operating this new type of service or other classes of unit toll service provided that the prescribed travel conditions are not violated. In addition, interlining of trips involving transportation on different classes of unit toll services would be allowed.

7. Consumer protection

Currently, the Committee attempts by indirect means (i.e. through the carrier) to ensure financial stability of the tour operators and charterers. This control of tour operators and charterers through charter air carriers has never been fully effective; yet problems rarely arise in connection with tour wholesalers or travel agents acting as intermediaries for scheduled airlines.

The separation of legal jurisdiction between the provinces and the federal government has created difficulties for the Committee. The introduction of a specialized unit toll service in place of domestic ABCs and ITCs would assist the Committee to better guard against possible unethical or illegal practices of travel intermediaries. The Committee could bring its full force to bear directly on the conduct of the air carrier operating a specialized unit toll service and where regulation may be insufficient from a consumer's viewpoint he or she would be free to pursue any instance of alleged malpractice by a carrier through the courts.

Summary

In a relatively short period of time, i.e. within the last 6 years, we have witnessed in Canada the introduction and successful development of low-priced air travel by both scheduled and charter carriers. This development has been so successful and vast that some could argue that there is now no meaningful distinction, as mandated by government policy, between scheduled and charter carriers. In addition, this unclear distinction is thought by some to be a primary cause for the poor financial results being recorded by most of Canada's largest carriers.

The time now seems appropriate for the economic regulations, which bear on the provision of low-priced air travel within Canada, to be given close public scrutiny to see if they are relevant for today's needs and if they are reflective of government policy and the realities of the marketplace.

From the contents of this paper, it may be seen that there may be rule changes that merit serious consideration for introduction; rule changes that would correct fundamental regulatory problems (e.g. put most retail air fares under the direct control of the Committee) and which would provide a fair and equal opportunity for a number of carriers to compete for the leisure travel markets. The rule changes offered for discussion could also tend to better ensure the maintenance of an appropriate level of scheduled service by reserving most of the non-discretionary travel market for service by the Class 1 and Class 2 carriers.

Briefly stated, the rule changes outlined in this paper and presented for debate would, if adopted without change, result in the creation of a new type of specialized unit toll commercial air service which would replace those services now provided under the domestic ABC and ITC Regulations.

A holder of this new type of specialized unit toll licence would be able to operate, subject to program approval, between points of its choosing without complying with capacity or frequency limitations except it would have to operate aircraft within the weight group allowed on his licence. The retail fares offered directly by the carrier or by an intermediary for travel on a specialized unit toll flight would be subject to disallowance by the Committee.

The new type of unit toll service envisaged would largely specialize in serving the discretionary or leisure market. Therefore, travel restrictions considered to be of no serious impediment to travellers in this category would be a condition of a specialized unit toll licence.

It is contemplated that those carriers now holding a Class 4 licence valid for operating an ABC or ITC would be provided with a specialized unit toll licence upon request. While specialized unit toll carriers would not be required to operate in accordance with a published timetable, they would be required to notify booked passengers within a

reasonable time period before the planned departure time and date if there are going to be changes to that schedule. Regulations would require that passengers faced with a change to their planned travel dates be offered alternate transportation arrangements suitable to them or a full refund of all monies paid. To ensure compliance with these consumer protection regulations, specialized unit toll carriers would be required to file with the Committee current operating plans.

Planned tariffs applicable to the new type of unit toll service would be required to be submitted to the Committee in advance of planned effectiveness and advertising or sale of the fares would be prohibited for a period of time after their date of submission to the Committee.

Finally, specialized unit toll carriers would be authorized to carry bellyhold cargo at unit toll rates between points where they enplane and deplane passengers.

